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## I. BACKGROUND

1. On July 20, 1992, this Court entered a Consent Decree ("Active Products Consent Decree") resolving the civil actions filed as consolidated case numbers F91-00247 and F91-00281, United States and State of Indiana v. Active Products, et al.. Under that Decree and in return for various covenants not to sue from the United States, principally under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, twenty-eight (28) settling defendants agreed, inter alia, to pay most of the United States' past response costs for the Wayne Reclamation & Recycling, Inc. Site (the "Facility"), located near Columbia City, Indiana, and to implement the remedy selected by the United States Environmental Protection Agency ("EPA") for the Facility. In addition, another one hundred and sixty (160) defendants, all determined to be de minimis under CERCLA Section 122(g), made payments to defray part of the cost of cleaning up the Facility, and also received certain covenants from the United States, principally under CERCLA Sections 106 and 107. The defendants who were party to the Active Products Consent Decree also resolved any contribution claims they may have had against each other.

2. The twenty-eight settling defendants (also known as the "RD/RA Settlers") who agreed to clean up the Facility under the Active Products Consent Decree have undertaken that work and have incurred response costs in doing so. On-site construction of the

remedial action components was completed in June, 1995.

Operation and maintenance of these systems has started and will continue.

3. Those RD/RA Settlers listed on Appendix A to this Consent Decree have identified other persons who may be liable for some share of the costs of cleaning up the Facility. These RD/RA Settlers based this identification upon documentary evidence not known to the United States or the RD/RA Settlers at the time of entry of the Active Products Consent Decree. In late May and early June of 1995, these RD/RA Settlers made written demands upon these other persons for payment, as well as upon previously identified persons who may be liable for cleanup costs at the Facility and who were not parties to the Active Products Consent Decree. On July 19, 1995, the RD/RA Settlers filed a CERCLA action in this Court against not less than approximately 1,181 defendants, seeking to recover sums that the RD/RA Settlers have spent and will spend in the course of performing response actions at the Facility under the Active Products Consent Decree. Active Products Corp., et al. v. A. H. Choitz & Co. Inc., et al. (Civil No. 1:95-CV-231). With the concurrence of the United States, the State of Indiana, and all De Minimis Settlers, each of whom is listed in Appendix B to this De Minimis Decree, the RD/RA Settlers also seek to join this CERCLA action filed by the United States and the action filed by the State of Indiana, as Intervenor-Plaintiffs, and, through the settlement of these actions under this consent decree ("the De

Minimis Decree"), these RD/RA Settlers (hereinafter, the "Intervenor-Plaintiffs") intend to resolve their CERCLA and certain other claims against all De Minimis Settlers.

4. The United States, the State of Indiana, the Intervenor-Plaintiffs, and De Minimis Settlers agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law, except as provided in Sections I and III of this De Minimis Decree, is the most appropriate means of resolving this action with respect to the De Minimis Settlers.

5. The Intervenor-Plaintiffs and De Minimis Settlers do not admit any liability to the United States or the State of Indiana, or to any other party to this De Minimis Consent Decree, arising out of the transactions or occurrences alleged in the Complaint in this action.

6. The United States, the State of Indiana, the Intervenor-Plaintiffs, and the De Minimis Settlers also all agree, and this Court finds by entering this Decree, that the settlement embodied herein is fair, reasonable, consistent with the statutory purposes of CERCLA, and in the public interest.

## II. EPA DETERMINATIONS

7. The Superfund Division Director of EPA, Region 5 has determined, and the Indiana Department of Environmental Management has been apprised of, the following:

a. prompt settlement with each Intervenor-Plaintiff and De Minimis Settlor is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

b. the payment to be made by each De Minimis Settlor under this De Minimis Consent Decree involves only a minor portion of the response costs at the Facility within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's current estimate that the total response costs incurred and to be incurred by the EPA Hazardous Substance Superfund, by the Indiana Hazardous Substance Response Trust Fund, and by potentially responsible parties at the Facility is approximately \$ 17.3 million; and

c. the amount of hazardous substances contributed to the Facility by each De Minimis Settlor and the toxic or other hazardous effects of the hazardous substances contributed to the Facility by each De Minimis Settlor are minimal in comparison to other hazardous substances at the Facility pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is because the amount of hazardous substances contributed to the Facility by each De Minimis Settlor does not exceed 1% of the hazardous substances at the Facility, and the hazardous substances contributed by each De Minimis Settlor to the Facility are not disproportionate in their toxic or other hazardous effects in comparison with the other hazardous substances disposed of at the Facility.

NOW, THEREFORE, it is ORDERED, ADJUDGED, and DECREED as follows:

### III. JURISDICTION

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9613(b) and 9622(g)(4). This Court also has personal jurisdiction over the De Minimis Settlers. The Complaints of the United States and the State of Indiana recite claims upon which relief may be granted. Solely for the purposes of this Consent Decree and the United States', the State of Indiana's, and the Intervenor-Plaintiffs' complaints against the De Minimis Settlers, the De Minimis Settlers and Intervenor-Plaintiffs waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The De Minimis Settlers and Intervenor-Plaintiffs shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Decree, and the De Minimis Settlers and the Intervenor-Plaintiffs agree to entry of this Decree without further notice.

### IV. PARTIES BOUND

9. This Consent Decree shall apply to and be binding upon the United States and the State of Indiana, and shall apply to and be binding upon the Intervenor-Plaintiffs and the De Minimis Settlers and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of an Intervenor-Plaintiff or a De Minimis Settlor, including, but not limited to,

any transfer of assets or real or personal property, shall in no way alter such Intervenor-Plaintiff's or De Minimis Settlor's responsibilities under this Consent Decree.

**V. STATEMENT OF PURPOSE**

10. By entering into this De Minimis Consent Decree, the mutual objectives of the United States, the State of Indiana, the Intervenor-Plaintiffs, and the De Minimis Settlers are:

a. to reach with the De Minimis Settlers a final settlement, as described in this De Minimis Decree, regarding the Facility pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows the De Minimis Settlers to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106, 107, and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607 & 9613, and Section 7003 of RCRA, 42 U.S.C. § 6973, for injunctive relief with regard to the Facility and for response costs incurred and to be incurred at or in connection with the Facility, thereby avoiding difficult, prolonged, and complicated litigation among the Parties;

b. to simplify any and all remaining administrative and judicial enforcement activities concerning the Facility by eliminating a substantial number of potentially responsible parties from further involvement at the Facility; and

c. to obtain settlement with the De Minimis Settlers for at least their fair share of response costs incurred and to be incurred at or in connection with the Facility by the EPA

Hazardous Substance Superfund, by the State of Indiana, and by private parties including the Intervenor-Plaintiffs, in exchange for full and complete contribution protection for the De Minimis Settlers with regard to the Facility, as described in this De Minimis Decree, pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

## VI. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this De Minimis Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.

b. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "De Minimis Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.

d. "Active Products Consent Decree" shall mean the Consent Decree entered by this Court on July 20, 1992 in United States and State of Indiana v. Active Products, et al., Civ. Nos. F91-00247 and F91-00281.

e. "De Minimis Settlers" or "Settling Defendants" shall mean the de minimis parties listed on Appendix B of this Decree.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies, or instrumentalities.

g. "EPA Hazardous Substances Superfund" shall mean the Hazardous Substances Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507, and "Indiana Hazardous Substance Response Trust Fund" shall mean the fund established under Indiana Code 13-7-8.7-2.

h. "Hazardous substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

i. "Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

j. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral.

k. "Parties" shall mean the United States, the State of Indiana, the Intervenor-Plaintiffs, and the De Minimis Settlers.

l. "Intervenor-Plaintiffs" shall mean those parties listed on Appendix A to this Decree, the same parties who filed Civ. No. 1:95-C-0231 (A. H. Choitz Co., et al.) in this District ("A. H. Choitz action") or assigned their rights with respect to recoveries for clean up costs at the Facility and who are some of the RD/RA Settlers that agreed to clean up the Facility under the RD/RA Consent Decree.

m. "Response costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

n. "Facility" shall have the meaning as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and refers to the location where hazardous substances have been deposited, stored, disposed of, treated or placed by Wayne Reclamation & Recycling, Inc. and other related entities, or otherwise came to be located, which facility is located within and near the city limits of Columbia City, Whitley County, State of Indiana, as generally shown on Appendix D to this Decree.

o. "United States" shall mean the United States of America, including its agencies, departments, and instrumentalities.

p. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6901 et seq. (also known as the Resource Conservation and Recovery Act).

q. "State of Indiana" shall mean the State of Indiana and all of its Agencies and branches, including the Indiana Department of Environmental Management and the State of Indiana's Natural Resource Trustees.

## VII. PAYMENT

12. If it has not already paid the amount listed on Appendix B to the Wayne Reclamation & Recycling RD/RA Settlor's Trust Fund (hereinafter "Trust Fund"), each De Minimis Settlor shall pay that sum within thirty (30) days after entry of this De Minimis Decree, provided, however that where Appendix C of this De Minimis Decree provides a specific De Minimis Settlor with more than thirty days to pay, such schedule shall dictate the time and manner of payment to the Trust Fund. The payment(s) shall be delivered to Bill Hall or John Fehrenbach of Winston & Strawn in the form of a certified or cashier check payable to "Wayne Reclamation and Recycling RD/RA Settlor's Trust Fund" and shall reference the name, address, and defendant number in the A. H. Choitz action.

Each De Minimis Settlor's payment includes an amount for: a) natural resource damage claims; b) past response costs at or in connection with the Facility; c) projected future response costs to be incurred at or in connection with the Facility; and

d) a premium to cover the time value of money and the risks associated with this de minimis settlement, including but not limited to, the risk that total response costs incurred and to be incurred at the Facility by the EPA Hazardous Substance Superfund, or by any potentially responsible party at the Facility who is not a De Minimis Settlor, will exceed the estimated total response costs upon which De Minimis Settlers' payments are based, either because the selected remedy is more expensive than expected or because of remedy failure or because of the need to perform additional work under the Active Products Consent Decree to assure the adequate protection of public health and the environment.

13. Within forty (40) days of entry of this Decree, the Trust Fund shall pay to the United States and the State of Indiana the following sums, in the manner specified below:

a. \$166,240 to the EPA Hazardous Substances Superfund, delivered to the EPA, Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673 in the form of a certified or cashier check payable to "EPA Hazardous Substances Superfund". The check, or a transmittal accompanying the check, shall reference the name and address of the party making payment, the Facility name, EPA CERCLA Number IND 95, and DOJ Case Number 90-11-3-603;

b. \$24,000 to the Office of the Secretary of the Interior for damage to natural resources at the Facility.

Payment shall be made as directed by the United States, upon

entry of this Decree. The payment should reference the Facility name and the Consent Decree to which it pertains.

c. \$12,826.17 to the Indiana Hazardous Substance Response Trust Fund, delivered to the Indiana Department of Environmental Management, 100 North Senate Avenue, P.O. Box 6015, Indiana Government Center North, Indianapolis, Indiana 46206, Attn: Bob Schaible, Project Manager. Payment shall be in the form of a certified or cashier check payable to "Indiana Hazardous Substance Response Trust Fund". The check, or a transmittal accompanying the check, shall reference the name and address of the party making payment and the Facility name.

14. At the time of each payment by the Intervenor-Plaintiffs under Section VII of this De Minimis Consent Decree, the Intervenor-Plaintiffs shall send a copy of all payment transmittal documentation to:

Chief, Environmental Enforcement Section  
United States Department of Justice  
DJ No. 90-11-3-603  
P.O. Box 7611  
Washington, D.C. 20044

Kevin C. Chow  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA, Region 5 (C-29A)  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Bob Schaible  
Project Manager  
Indiana Department of Environmental Management  
100 North Senate Avenue  
P.O. Box 6015  
Indiana Government Center North  
Indianapolis, Indiana 46206

**VIII. FAILURE TO MAKE PAYMENTS TO THE UNITED STATES**

15. If the Intervenor-Plaintiffs fail to make full payment within the time required by Paragraph 13, they shall pay Interest on the unpaid balance. Nothing in this provision alters the right of the United States or the State of Indiana to take any available action against the Intervenor-Plaintiffs, including the right of the United States to bring an action against the Intervenor-Plaintiffs to seek injunctive relief to compel payment and/or seek civil penalties under Section 122(1) of CERCLA, 42 U.S.C. 9622(1), for failure to make timely payment.

**IX. CERTIFICATION OF DE MINIMIS SETTLORS AND RD/RA SETTLORS**

16. De Minimis Settlor. By signing this Consent Decree, each De Minimis Settlor certifies, individually, that, to the best of its knowledge and belief, the De Minimis Settlor has:

a. Received from the Intervenor-Plaintiffs copies of invoices or other documents purporting to demonstrate that the De Minimis Settlor arranged for the disposal of hazardous substances at the Facility;

b. Conducted a reasonable, good faith search and inquiry for documents other than those received from the

Intervenor-Plaintiffs, and has fully and accurately disclosed to EPA or to the Intervenor-Plaintiffs all additional information, currently in the De Minimis Settlor's possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Facility, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, contaminant, or waste material at or in connection with the Facility; provided, however, that each De Minimis Settlor may withhold any document protected by the attorney-client or attorney work product privileges so long as the De Minimis Settlor has disclosed the information contained in such document that relates to any alleged generation, treatment, transportation, storage, or disposal of a hazardous substance, pollutant, contaminant, or waste material at or in connection with the Facility;

c. No information or documents, and is unaware of any information or documents, which purport to indicate that the hazardous substances, pollutants, contaminants, or other waste materials picked up by Wayne Reclamation and Recycling, Inc. from the De Minimis Settlor's operation(s), or which otherwise were allegedly sent to the Facility, were greater in amount than or different in nature from the waste amount or nature of waste set forth for that De Minimis Settlor in Appendix B; and

d. Not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other

information relating to De Minimis Settlor's potential liability regarding the Facility after notification of potential liability or the filing of a suit against De Minimis Settlor regarding the Facility.

17. Intervenor-Plaintiffs. By signing this Consent Decree, each Intervenor-Plaintiff certifies, individually, that to the best of its knowledge and belief the Intervenor-Plaintiff has:

a. in estimating - for settlement purposes - the amount of waste to be assigned to each potentially responsible party, including each Intervenor-Plaintiff, for clean up of the Facility, the Intervenor-Plaintiff used its best efforts to collect and tally such information accurately, fairly, and without bias against any person or group or class of persons;

b. fully and fairly examined each written grievance or challenge presented to the Intervenor-Plaintiffs in connection with the manner in which the Intervenor-Plaintiffs calculated for settlement purposes the portion of waste allegedly attributable to each person with whom the Intervenor-Plaintiffs offered a settlement;

c. answered completely and honestly all questions presented to the Intervenor-Plaintiffs by the United States on or after March 15, 1995 in the course of EPA's gathering information about the propriety and the fairness of the settlement embodied in this De Minimis Consent Decree; and

d. made available for inspection by the United States all non-privileged documents used by the Intervenor-Plaintiffs in

calculating the settlement offers made by the Intervenor-Plaintiffs to those named as defendants in the A. H. Choitz action and to those De Minimis Settlers who settled prior to the filing of the A. H. Choitz action; and

e. certified that the total costs expended and to be incurred at the Facility and for the ultimate completion of remedial design and remedial action at the Facility have been fairly and reasonably estimated by the Intervenor-Plaintiffs to total not less than approximately \$17.3 million, \$3.9 million of which represents estimated costs associated with the annual operation, maintenance, and oversight of the remedy during the period subsequent to May, 1995.

#### **X. COVENANT NOT TO SUE BY UNITED STATES**

18. In consideration of the payments that have been made and are to be made by the De Minimis Settlers in satisfaction of the claims of the United States under the terms of this Consent Decree, and except as specifically provided in Paragraphs 23 and 24, the United States covenants not to sue or take administrative action against any of the De Minimis Settlers pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Facility. With respect to alleged present and future liability, this covenant not to sue shall take effect with respect to each De Minimis Settlor upon the receipt by the United States of the Trust Fund payments required by Paragraph 13 of this Consent

Decree. With respect to each De Minimis Settlor, individually, this covenant not to sue is conditioned upon: a) the complete and satisfactory performance by the De Minimis Settlor of all obligations under this Consent Decree including payment obligations under Paragraph 12 and, if applicable, Appendix C; and b) the veracity and completeness of the information provided to EPA and/or the Intervenor-Plaintiffs by the De Minimis Settlor relating to the De Minimis Settlor's alleged involvement with the Facility pursuant to Paragraph 16(a) through (d) of this De Minimis Decree. This covenant not to sue shall be null and void with respect to any individual De Minimis Settlor that: a) fails to perform all obligations under this Consent Decree (including all payment obligations under Paragraph 12 and, if applicable, Appendix C) in a complete and satisfactory manner; or b) has provided materially false, incomplete, or incorrect information pursuant to the Certification of De Minimis Settlers under Paragraph 16. This covenant not to sue extends only to the De Minimis Settlers and does not extend to any other person.

#### **XI. COVENANT NOT TO SUE BY STATE OF INDIANA**

19. In consideration of the payments that have been made and are to be made by the De Minimis Settlers in satisfaction of the claims of the State of Indiana under the terms of this Consent Decree, and except as specifically provided in Paragraphs 23 and 24, the State of Indiana covenants not to sue or take administrative action against any of the De Minimis Settlers

pursuant to CERCLA, RCRA, Indiana Code 13-7-8.7, and common law nuisance, relating to the Facility. With respect to alleged present and future liability, this covenant not to sue shall take effect with respect to each De Minimis Settlor upon the receipt by the State of Indiana of the Trust Fund payment required by Paragraph 13 of this Consent Decree. With respect to each De Minimis Settlor, individually, this covenant not to sue is conditioned upon: a) the complete and satisfactory performance by the De Minimis Settlor of all obligations under this Consent Decree including payment obligations under Paragraph 12 and, if applicable, Appendix C; and b) the veracity and completeness of the information provided to EPA and/or the Intervenor-Plaintiffs by the De Minimis Settlor relating to the De Minimis Settlor's alleged involvement with the Facility pursuant to Paragraph 16(a) through (d) of this De Minimis Decree. This covenant not to sue shall be null and void with respect to any individual De Minimis Settlor that: a) fails to perform all obligations under this Consent Decree (including all payment obligations under Paragraph 12 and, if applicable, Appendix C) in a complete and satisfactory manner; or b) has provided materially false, incomplete, or incorrect information pursuant to the Certification of De Minimis Settlers under Paragraph 16. This covenant not to sue extends only to the De Minimis Settlers and does not extend to any other person.

**XII. COVENANTS NOT TO SUE BY DE MINIMIS SETTLORS  
AND INTERVENOR-PLAINTIFFS**

20. The De Minimis Settlers covenant not to sue and agree not to assert any claims or causes of action against the United States, the State of Indiana, or their contractors or employees with respect to the Facility or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law, or any claims arising out of response activities at the Facility. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

21. The De Minimis Settlers covenant not to sue and agree not to assert any claims or causes of action against each other with regard to the Facility pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7003 of RCRA, 42 U.S.C. § 6973, Indiana Code 13-7-8.7, and common law nuisance. The De Minimis Settlers also covenant not to sue and agree not to assert any claims or causes of action against the Intervenor-Plaintiffs pursuant to, and as provided in, the Release and Settlement Agreement entered into by each De Minimis Settlor and the Intervenor-Plaintiffs, models of which are attached hereto as Appendices F and G. The De Minimis Settlers further covenant not

to sue any other person under CERCLA, 42 U.S.C. § 9601 et seq., Section 7003 of RCRA, 42 U.S.C. § 6973, Indiana Code 13-7-8.7, and common law nuisance for any matter related to this Facility.

22. The Intervenor-Plaintiffs covenant not to sue and agree not to assert any claims or causes of action against each De Minimis Settlor as provided in the Release and Settlement Agreement entered into by the Intervenor-Plaintiffs and such De Minimis Settlor, models of which are attached hereto as Appendices F and G. The Intervenor-Plaintiffs also covenant not to sue any other person who may be liable under CERCLA for arranging for the disposal of hazardous substances placed at the Facility other than those named as defendants in the A. H. Choitz action, provided, however, that nothing in this Paragraph 22 shall bar the Intervenor-Plaintiffs from any of the following:

a. filing any motion seeking leave to amend the A. H. Choitz Complaint on or before December 31, 1996 for the purpose of correcting the Complaint to name a party the Intervenor-Plaintiffs attempted to name in the original complaint but did not correctly identify owing to inadvertence or lack of information needed to identify the party correctly in the first instance, or to name a party based upon allegations of dissolution, fraudulent transfer of a named party's assets, or other successorship of legal responsibility from a party already named to another person.

b. filing any motion in the A. H. Choitz action under Rule 25, Fed. R. Civ. P.;

c. filing a CERCLA claim against any person for recovery of costs incurred in connection with the Facility if and only if, on or before July 20, 1995, the RD/RA Settlers should not have had any reason to know that such person may have been a customer of Wayne Reclamation and Recycling, Inc.;

d. filing a claim for failure to meet a requirement of this De Minimis Consent Decree; and

e. filing a claim for liability to the Intervenor-Plaintiffs for arranging for disposal or treatment of hazardous substances at the Facility by or on behalf of a De Minimis Settlor where such arrangement for disposal or treatment takes place after the date of lodging of this De Minimis Consent Decree and where such disposal or treatment was not required by the Facility clean up being carried out by the RD/RA Settlers under the Active Products Consent Decree.

**XIII. OTHER RESERVATIONS OF RIGHTS BY THE UNITED STATES AND THE STATE OF INDIANA**

23. The covenants not to sue by the United States and the State of Indiana set forth in Paragraphs 18 and 19 do not pertain to any matters other than those expressly specified in Paragraphs 18 and 19. The United States and the State of Indiana reserve, and this Consent Decree is without prejudice to, all rights against the De Minimis Settlers with respect to all other matters, including but not limited to the following:

a. liability for failure to meet a requirement of this De Minimis Consent Decree;

b. criminal liability; and

c. liability for arranging for disposal or treatment of hazardous substances at the Facility by or on behalf of a De Minimis Settlor where such future arrangement for disposal or treatment takes place after the date of lodging of this De Minimis Consent Decree and where such disposal or treatment was not required by the Facility clean up being carried out by the RD/RA Settlers under the Active Products Consent Decree.

24. Notwithstanding any other provision in this De Minimis Consent Decree, the United States and the State of Indiana reserve, and this De Minimis Consent Decree is without prejudice to, the right to institute proceedings against any individual De Minimis Settlor in this action or in a new action or to issue an administrative order to any individual De Minimis Settlor seeking to compel that De Minimis Settlor to perform response actions relating to the Facility, or to reimburse the United States or the State of Indiana for additional costs of response, if any individual De Minimis Settlor -- after signing this Consent Decree -- becomes an owner or operator of the Facility or undertakes any activity with regard to hazardous substances at the Facility; or if information is discovered which indicates that the De Minimis Settlor contributed hazardous substances to the Facility in such greater amount or of such greater toxic or other hazardous effects that such De Minimis Settlor no longer qualifies as a de minimis party at the Facility because of

failure to meet the toxicity or amount limit set out in Paragraph 7(c) as the qualifying de minimis determination.

#### XIV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

25. Nothing in this De Minimis Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as otherwise specified in this De Minimis Consent Decree or the Active Products Consent Decree, the United States, the State of Indiana, the Intervenor-Plaintiffs, and the De Minimis Settlers each reserve any and all rights, defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Facility.

26. The United States, the State of Indiana, the Intervenor-Plaintiffs, and the De Minimis Settlers agree that the actions undertaken by the Intervenor-Plaintiffs and the De Minimis Settlers in accordance with this Consent Decree do not constitute an admission of any liability by any party.

27. In any subsequent administrative or judicial proceeding initiated by the United States or the State of Indiana for injunctive relief, recovery of response costs, or other appropriate relief relating to the Facility, no Intervenor-Plaintiff or De Minimis Settlor shall assert or maintain any

defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph 27 affects the enforceability of the covenants not to sue included in Paragraphs 18 and 19 of this De Minimis Consent Decree or in Paragraph 78 of the Active Products Consent Decree.

28. With regard to claims for contribution against each De Minimis Settlor, the Parties hereto agree that each De Minimis Settlor is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), for matters addressed in this De Minimis Consent Decree. The matters addressed in this De Minimis Consent Decree are all response actions taken and to be taken by the United States, the State of Indiana, and the Intervenor-Plaintiffs, and all response costs incurred and to be incurred, by the United States, the State of Indiana, or by private parties, including the Intervenor-Plaintiffs, at or in connection with the Facility.

#### **XV. COMPLETE AGREEMENT/APPENDICES**

29. This De Minimis Consent Decree and its appendices constitute the final, complete, and exclusive agreement and

understanding among the Parties with respect to the settlement embodied in this De Minimis Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this De Minimis Consent Decree, except the Release and Settlement Agreement which has been entered into by the Intervenor-Plaintiffs and each De Minimis Settlor. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the list of Intervenor-Plaintiffs participating in the A. H. Choitz action and this Consent Decree.

"Appendix B" is the list of De Minimis Settlers who are signatories to this Consent Decree, the waste amount alleged for each De Minimis Settlor, and the amount paid or to be paid by each.

"Appendix C" is the payment schedule for certain De Minimis Settlers.

"Appendix D" is a map of the Facility.

"Appendix E" is a summary explanation of the formula used in determining the amounts demanded of the De Minimis Settlers by the Intervenor-Plaintiffs.

"Appendices F and G" are models of the Release and Settlement Agreement entered into by the Intervenor-Plaintiffs and De Minimis Settlers.

#### XVI. PUBLIC COMMENT

30. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree are subject to the public notice and comment provisions of Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7, as well as any public comment received through any public meeting held under RCRA Section 7003(d), 42 U.S.C. § 6073(d). In accordance with those provisions, a notice of the lodging of the proposed settlement shall be published in the Federal Register after the De Minimis Consent Decree is lodged with the Court. Members of the public shall be provided at least thirty (30) days after publication of that notice to inform the U.S. Department of Justice of any comments concerning the proposed settlement, and the U.S. Department of Justice shall receive and consider, and after concluding such consideration, shall file with the Court any written comments, views or allegations relating to the proposed settlement.

31. The Parties agree and acknowledge that the United States and the State of Indiana each reserves the right to withdraw or withhold its consent to this De Minimis Consent Decree if the comments regarding the De Minimis Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. The Intervenor-Plaintiffs and De Minimis Settlers consent to entry of this Consent Decree without further notice, and the United States, the State of Indiana, and Intervenor-Plaintiffs reserve the right to

oppose an attempt by any other person to intervene in this civil action.

**XVII. EFFECTIVE DATE**

32. The effective date of this Consent Decree shall be the date of entry by this Court, following public comment pursuant to Paragraphs 30 and 31.

**XVIII. SIGNATORIES/SERVICE**

33. Each undersigned representative of a De Minimis Settlor or Intervenor-Plaintiff who is a party to this Consent Decree, the undersigned representative of the Environment and Natural Resources Division of the U.S. Department of Justice, and the Deputy Attorney General for the State of Indiana on behalf of the Governor of Indiana, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

34. Each De Minimis Settlor and Intervenor-Plaintiff hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States or the State of Indiana has notified the De Minimis Settlers and Intervenor-Plaintiffs in writing that it no longer supports entry of the Consent Decree.

35. Each De Minimis Settlor shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that

party with respect to all matters arising under or relating to this De Minimis Consent Decree. The De Minimis Settlers hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

**XIX. RD/RA DECREE REMAINS IN EFFECT**

36. The 1992 Active Products Consent Decree remains in full force and effect, except to the extent that covenants made in this De Minimis Consent Decree by the Intervenor-Plaintiffs, the United States, and the State of Indiana resolve claims or portions of claims that were reserved under the 1992 Active Products Consent Decree.

**XX. RETENTION OF JURISDICTION; SATISFACTION**

37. The Court shall retain jurisdiction of this matter and the parties for the purpose of enforcing the terms of this Consent Decree, and to resolve any disputes that may arise regarding the construction or implementation of this Consent Decree.

38. Upon each receiving the timely payments of the amount due them under Section VII of this Consent Decree, the United States and the State of Indiana each shall file a Notice with the Court, stating that such payments have been received.

**XXI. COUNTERPARTS**

39. This De Minimis Consent Decree may be executed in any number of counterparts, each of which when executed and delivered to EPA shall be deemed to be an original, but each such counterpart shall together constitute one and the same document.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 199\_\_.

\_\_\_\_\_  
William C. Lee  
United States District Judge

THE UNDERSIGNED PARTIES, by signing this Signature Page, hereby consent to abide by and be bound to all the terms, conditions, and requirements set forth in the foregoing De Minimis Consent Decree relating to the Wayne Reclamation and Recycling, Inc. Site, Columbia City, Indiana.

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

\_\_\_\_\_  
Environment and Natural Resources  
Division  
U.S. Department of Justice

\_\_\_\_\_  
Thomas A. Mariani, Jr.  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611

\_\_\_\_\_  
William E. Muno  
Director, Superfund Division  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

\_\_\_\_\_  
Kevin C. Chow  
Assistant Regional Counsel  
U.S. Environmental Protection  
Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

FOR THE STATE OF INDIANA

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael O'Connor  
Commissioner  
Indiana Department of Environmental  
Management  
100 North Senate Avenue  
Post Office Box 6015  
Indianapolis, Indiana 46206-6015

OFFICE OF THE GOVERNOR

Date: \_\_\_\_\_

By: \_\_\_\_\_

APPROVED AS TO LEGALITY AND FORM

Pamela Carter  
Attorney General of Indiana

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Myra Spicker  
Deputy Attorney General

THE UNDERSIGNED PARTY, by signing this Signature Page, hereby consents to abide by and be bound to all the terms, conditions, and requirements set forth in the foregoing De Minimis Consent Decree relating to the Wayne Reclamation and Recycling, Inc. Site, Columbia City, Indiana.

FOR DEFENDANT

\_\_\_\_\_  
[Name and Defendant No. in  
A. H. Choitz action]

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
[Address]

\_\_\_\_\_  
[Phone Number]

\_\_\_\_\_  
[FAX Number]

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name, Type or Print]

Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

THE UNDERSIGNED PARTY, by signing this Signature Page, hereby consents to abide by and be bound to all the terms, conditions, and requirements set forth in the foregoing De Minimis Consent Decree relating to the Wayne Reclamation and Recycling, Inc. Site, Columbia City, Indiana.

FOR INTERVENOR-PLAINTIFF

\_\_\_\_\_  
[Name]

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
[Address]

\_\_\_\_\_  
[Phone Number]

\_\_\_\_\_  
[FAX Number]

Date: \_\_\_\_\_

By: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name, Type or Print]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_