

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
RD/RA CONSENT DECREE

PSC RESOURCES SUPERFUND SITE
PALMER, MASSACHUSETTS

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

UNITED STATES OF AMERICA and)	
COMMONWEALTH OF MASSACHUSETTS)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.
)	
AMF REECE, INC., ET AL.)	
)	
Defendants)	

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred and to be incurred by EPA and the Department of Justice for response actions at the PSC Resources Superfund Site in Palmer, Massachusetts, together with accrued interest; and (2) performance of studies and response work by the Performing Settling Defendants at the Site (as defined below) consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

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C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Massachusetts (the "Commonwealth") on August 5, 1993 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The Commonwealth, on behalf of the Executive Office of Environmental Affairs ("EOEA") and the Massachusetts Department of Environmental Protection ("DEP"), has also filed a complaint against the defendants in this Court alleging that the defendants are liable to the Commonwealth under Section 107 of CERCLA, 42 U.S.C. § 9607, M.G.L. c. 21E, and the common law of nuisance. The Commonwealth in its complaint seeks: (1) reimbursement of costs incurred and for costs to be incurred by the Commonwealth for response actions as defined in M.G.L. c.21E, Section 2, at the Site, together with accrued interest; and (2) performance of response actions at the Site, including without limitation operation and maintenance activities required to maintain the effectiveness of the remedial action; and (3) damages for injury to and for destruction or loss of natural resources, at the Site, including the costs of assessing and evaluating such injury, destruction or loss, incurred or suffered.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal natural resource trustees

on July 1, 1993 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

F. The Defendants that have entered into this Consent Decree ("Settling Defendants" and "New Jersey") do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints and, except to the extent compromised or waived in this Consent Decree, reserve all defenses to any claims asserted in connection with the Site. The Settling Defendants and New Jersey reserve the right to contest in any subsequent proceeding, other than a proceeding to enforce this Consent Decree, the validity of any legal or factual determination made herein. The Settling Defendants and New Jersey have stipulated to the entry of this Consent Decree to compromise a disputed claim.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40658.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced on September 30, 1987, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. EPA issued a Remedial Investigation ("RI") Report and a Feasibility Study ("FS") Report on March 20, 1992.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the issuance of the FS Report and of the proposed plan for remedial action on March 26, 1992 in the Palmer Journal Register and on March 29, 1992 in the Springfield Union. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in the Record of Decision ("ROD"), executed on September 15, 1992, on which the Commonwealth has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. Based on the information presently available to EPA and the Commonwealth, EPA and the Commonwealth believe that the Work (as defined below) will be properly and promptly conducted by the Performing Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

M. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Performing Settling Defendants shall constitute a response

action taken or ordered by the President.

N. Information currently known to EPA and the Commonwealth indicates that the amount of hazardous substances allegedly contributed to the Site by each De Minimis Settling Defendant does not exceed 1% of the hazardous substances at the Site, and that the toxic or other hazardous effects of the hazardous substances allegedly contributed to the Site by each De Minimis Settling Defendant individually do not contribute disproportionately to the cumulative toxic or other hazardous effects of the hazardous substances at the Site.

O. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the Commonwealth, Settling Defendants, New Jersey, and Settling Federal Agencies. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54(b).

P. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. 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. §§ 9606, 9607, and 9613(b) and pendent subject matter jurisdiction over the claims arising under the laws of Massachusetts. This Court also has personal jurisdiction over the Settling Defendants and New Jersey. For the purposes of this Consent Decree, Settling Defendants and New Jersey waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants, New Jersey and Settling Federal Agencies shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree. The Complaints state claims against Settling Defendants and New Jersey upon which relief may be granted.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States, New Jersey, Settling Federal Agencies and the Commonwealth, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Performing Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Performing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder

upon performance of the Work in conformity with the terms of this Consent Decree. Performing Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Performing Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Performing Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3), and Section 5(c)(3) of M.G.L. c. 21E.

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. With respect to the Commonwealth's claims under Chapter 21E, this Consent Decree incorporates the definitions set forth in Section 2 of Chapter 21E as they exist at the date of entry of this Consent Decree, and any amendments thereto, unless otherwise defined in this Consent Decree. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response,

Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Chapter 21C" shall mean the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws, Chapter 21C, as amended.

"Chapter 21E" shall mean the Massachusetts Oil and Hazardous Materials Release Prevention and Response Act, Massachusetts General Laws, Chapter 21E, as amended.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXXI). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or legal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or legal holiday, the period shall run until the close of business of the next working day.

"De Minimis Settling Defendants" shall mean those Settling Defendants listed on Adjusted Appendices F-1 and F-2, who have signed this Consent Decree, made payments required under this Consent Decree, and who are not disqualified from participating as De Minimis Settling Defendants in this Consent Decree.

"DEP" shall mean the Massachusetts Department of Environmental Protection and any successor departments or agencies of the State, and the predecessor agency, the Department of

Environmental Quality Engineering and its predecessor agencies.

"EOEA" shall mean the Massachusetts Executive Office of Environmental Affairs and any successor departments or agencies.

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the Commonwealth incur in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs of any risk assessment performed by or for EPA pursuant to Section IV.A.1. of the SOW following attainment of the Interim Cleanup Levels, the costs incurred pursuant to Sections VII, VIII, X (including, but not limited to, attorneys fees and the amount of just compensation, and the costs of any risk assessment performed by EPA prior to Certification of Completion of the Work as part of its periodic review of the remedy as required by Section 121(c) of CERCLA), XVI, XVII, Paragraphs 98, 99 of Section XXIII (Covenants Not to Sue by Plaintiffs) and Paragraph 136 of Section XXXVII (Additional Settling Parties). Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States and the Commonwealth in connection with the Site between April 30, 1994 and the effective

date of this Consent Decree and all interest on the Past Response Costs from April 30, 1994 to 30 days after the effective date of this Consent Decree.

"Institutional Controls" shall mean deed restrictions and other requirements and controls developed for one or more of the following purposes: 1) to restrict the use of groundwater at the Site prior to the attainment of Performance Standards; 2) to limit human or animal exposure to Waste Material; 3) to ensure non-interference with the performance of the Work; and 4) to ensure the integrity and effectiveness of the Work.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"New Jersey" shall mean the Department of Transportation of the State of New Jersey.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

"Owner Settling Defendant" shall mean the Town of Palmer, Massachusetts.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States, the Commonwealth of Massachusetts, New Jersey, Settling Federal Agencies and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United States and the Commonwealth incurred and paid with regard to the Site prior to April 30, 1994, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

"Performance Standards" shall mean those cleanup standards, standards of control, cleanup levels, treatment standards, institutional controls, and other substantive requirements, criteria or limitations set forth in the ROD or Paragraph 15 of this Consent Decree or the SOW.

"Performing Settling Defendants" shall mean those Settling Defendants listed on Appendix D.

"Performing Settling Defendants' Work Costs" shall mean all costs, whether direct or indirect, incurred by the Performing Settling Defendants in carrying out response actions required by this Consent Decree, or for which the Performing Settling Defendants are responsible under the terms and provisions of this Consent Decree.

"Plaintiffs" shall mean the United States and the Commonwealth of Massachusetts.

"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).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 15, 1992, by the Regional Administrator, EPA Region I, and all attachments thereto (attached hereto as Appendix A).

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Performing Settling Defendants to implement the final plans and specifications submitted by the Performing Settling Defendants pursuant to the Remedial Design Work Plan and approved by EPA, after reasonable opportunity for review and comment by the Commonwealth.

"Remedial Action Work Plan" shall mean the document submitted by the Performing Settling Defendants pursuant to Paragraph 14.d of this Consent Decree and described more fully in Paragraph 14.e.

"Remedial Design" shall mean those activities to be undertaken by the Performing Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document submitted by the Performing Settling Defendants pursuant to Paragraph 14.a of this Consent Decree and described more fully in Paragraph 14.b.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean those Parties identified in Appendices D (Performing Settling Defendants) and F-1 and F-2 (De Minimis Settling Defendants), and the Owner Settling Defendant. The provisions of this Consent Decree applicable to Settling Defendants shall be subject, in the case of the Parties identified in Appendices F-1 and F-2 as Settling Commonwealth Agencies, to the provisions of Part V, General Provisions, Paragraph 6(c).

"Settling Federal Agencies" shall mean those agencies or departments of the United States identified in Appendix E.

"Site" shall mean the PSC Resources Superfund Site, including the PSC Resources property, encompassing approximately 1.5 acres, located at 10 Water Street, in Palmer, Hampden County, Massachusetts, as generally depicted on the map attached as Appendix C; all areas where Waste Materials migrating from the PSC Resources property have come to be located; the contiguous area between the PSC Resources property and the Quaboag River; and all suitable areas in very close proximity to the contamination necessary for implementation of the Work.

"State" or "Commonwealth" shall mean the Commonwealth of Massachusetts.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Performing Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"Tier I Defendants" shall mean those De Minimis Settling Defendants listed on Appendix F-1.

"Tier II Defendants" shall mean those De Minimis Settling Defendants listed on Appendix F-2.

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under M.G.L. c. 21E. When referring to Chapter 21E, "Waste Material" shall also include (5) any "hazardous material" or "oil" under Section 2 of Chapter 21E; and (6) any "hazardous waste" under Massachusetts General Laws, Chapter 21C, Section 2.

"Work" shall mean all activities Performing Settling Defendants are required to perform under this Consent Decree, in accordance with the ROD as described by the SOW, including, but not limited to, Remedial Design, Remedial Action, Operation and Maintenance and any additional response actions pursuant to Section VII of this Consent Decree; provided however that "Work" shall not include those activities required by Section XXVII (Retention of Records).

V. GENERAL PROVISIONS5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Performing Settling Defendants and to resolve the claims of the United States and the Commonwealth against Settling Defendants, New Jersey and Settling Federal Agencies for Past Response Costs and Future Response Costs by means of payments specified in Section XVIII (Reimbursement of Response Costs) of this Consent Decree. In addition, this Consent Decree seeks to resolve certain contribution counterclaims or claims in recoupment against the United States or the Commonwealth by Settling Defendants, New Jersey and Settling Federal Agencies, as provided in Section XXIV (Covenants by Settling Defendants).

6. Commitments by Settling Defendants, New Jersey and Settling Federal Agencies

a. Performing Settling Defendants shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed or approved by EPA pursuant to this Consent Decree. Settling Defendants and New Jersey shall also reimburse the United States and the Commonwealth for Past Response Costs and Future Response Costs as provided in this Consent Decree. Settling Federal Agencies have agreed to settle their contribution liability for the Work performed by Performing

Settling Defendants under this Consent Decree and to reimburse the Superfund and the Massachusetts Challenge Fund for the amounts of Past Response Costs as specified in Section XVIII (Reimbursement of Response Costs) of the Consent Decree.

b. The obligations of Performing Settling Defendants to finance and perform the Work and to pay amounts owed the United States and the Commonwealth under this Consent Decree are joint and several. In the event of the failure of any one or more of the Performing Settling Defendants to implement any requirement of this Consent Decree applicable to Performing Settling Defendants, the remaining Performing Settling Defendants shall complete all such requirements. Each De Minimis Settling Defendant, New Jersey and Settling Federal Agency shall be responsible for payment of amounts owed the United States and the Commonwealth in accordance with the requirements of this Consent Decree. In no event shall any De Minimis Settling Defendant or New Jersey have any liabilities or responsibilities regarding the Work for which the Performing Settling Defendants are responsible pursuant to Section VI below.

c. As acknowledged by the Parties, the payment obligations imposed by this Consent Decree may require a Settling Commonwealth Agency identified in Appendix F-1 or F-2 to seek appropriations to fund its payments. No provision of this Decree shall be interpreted as or constitute a commitment that any Settling Commonwealth Agency obligate or pay funds in contravention of M.G.L. c. 29. References to specific times for

payment and obligations or consequences for failure to make payments pursuant to paragraphs 107, 108, and 110, and any appendices thereto, are not applicable to any such Settling Commonwealth Agency. Each Settling Commonwealth Agency agrees to:

i. make payment to an escrow agent designated by the De Minimis Settling Defendants, if still available, or the Trust Fund, within 180 days of September 7, 1994 for payment obligations imposed pursuant to paragraph 107; in the event that payment is not made within 45 days of September 7, 1994, the Settling Commonwealth Agency shall pay interest on the unpaid balance at the rate of 12% per annum; provided further that the covenants not to sue and contribution protection described in paragraph 111 and paragraph 103, respectively, shall not take effect as to that Settling Commonwealth Agency until such time as payment is made; and

ii. make payment within 18 months from the date of receipt of a request for payment imposed pursuant to paragraph 108; in the event that payment is not made within 45 days of receipt of the request, the Settling Commonwealth Agency shall pay interest on the unpaid balance at the rate of 12% per annum; provided that the continued effectiveness of the covenants not to sue and contribution protection described in paragraph 111 and paragraph 103, respectively, shall be conditioned upon the full and complete satisfaction of the payment imposed pursuant to paragraph 108; and

iii. make payment within 60 days of appropriations for payment imposed pursuant to paragraph 110; provided that in the event that payment is not made within 45 days of receipt of EPA's demand, the Settling Commonwealth Agency shall pay interest on the unpaid balance at the rate of 12% per annum; provided that the continued effectiveness of the covenants not to sue and contribution protection described in paragraph 111 shall be conditioned upon the full and complete satisfaction of the payment imposed pursuant to paragraph 110. If the Settling Commonwealth Agency elects to resolve a dispute regarding a demand made under paragraph 111 pursuant to Section XXI (Dispute Resolution), the accrual of interest shall be stayed until the Settling Commonwealth Agency's receipt of a final decision resolving the dispute at which point the accrual of interest will recommence.

7. Compliance With Applicable Law

All activities undertaken by Performing Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Performing Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and § 300.5 of the NCP, no federal, Commonwealth or local permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Performing Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Performing Settling Defendants may seek relief under the provisions of Section XX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. All hazardous waste, as defined under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and/or Chapter 21C, which is generated in performance of the Work shall be managed by the Performing Settling Defendants in accordance with the NCP, including but not limited to the RCRA requirements relating to the use and signing of manifests, and the requirements of 310 CMR 30.0000, the state-delegated RCRA authority. Performing Settling Defendants or their representatives shall be listed as the generator(s) on all manifested shipments of hazardous waste generated during performance of the Work.

d. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall record a certified copy of this Consent Decree with the Hampden Registry of Deeds, Hampden County, Commonwealth of Massachusetts. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and any lien retained by the United States or the Commonwealth and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of the Owner Settling Defendant with respect to the provision of access under Section X (Access) and the implementation of institutional controls under Section X shall be binding upon such Owner Settling Defendant and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall record at the Hampden Registry of Deeds a notice of obligation to provide access under Section X (Access) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. The Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such

interest, give written notice of this Consent Decree to the grantee and written notice to EPA and the Commonwealth of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Owner and Performing Settling Defendants' obligations under this Consent Decree, including their obligations to provide or secure access pursuant to Section X, shall continue to be met by the Owner and Performing Settling Defendants, respectively. In addition, if the United States and the Commonwealth approve, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Owner and Performing Settling Defendants to comply with the Consent Decree.

d. The Owner and Performing Settling Defendants shall not use any portion of the Site in any manner that EPA determines would adversely affect the integrity of any containment system, treatment system or monitoring system installed pursuant to this Consent Decree.

VI. PERFORMANCE OF THE WORK BY PERFORMING SETTLING DEFENDANTS

10. The Performing Settling Defendants shall perform the Work for the Site as described in this Decree; in the Record of Decision ("ROD"), attached hereto as Appendix A; in the Statement of Work ("SOW") (which the Parties agree is consistent with the ROD), attached hereto as Appendix B; and any modifications

thereto. The ROD, the SOW, and all modifications to the SOW, are hereby incorporated by reference and made a part of this Decree. In the event of any inconsistency between this Decree (considered independently of the ROD and SOW for purposes of this sentence) and the SOW, the provisions of this Decree shall control. The Work shall be performed in accordance with all the provisions of this Decree (considered independently of the ROD and SOW for purposes of this sentence), the SOW, any modifications to the SOW, and all design specifications, Work Plans or other plans or schedules attached to or approved pursuant to the SOW. Any modifications to the SOW, design specifications, Work Plans or other plans or schedules that are proposed by the Parties shall be pursuant to the procedures in Section XXXIII of this Decree. The major components of the Remedial Action for the Site, as described in the ROD, are as follows:

A. Source Control

1. Decontamination, demolition, and offsite disposal of property structures;
2. Treatment and discharge of lagoon surface water;
3. Consolidation of contaminated property soils with lagoon and wetland sediments on site property;
4. In-situ mixing and stabilization of property soils/sediments with treatment agents to bind contaminants into a stable matrix;
5. Construction of a permeable cap over stabilized property soils and sediments, and grading and

planting of the cap's surface;

6. Restoration of wetlands;
7. Implementation of institutional controls on ground water use and land development; and
8. Long-term monitoring of ground water, wetland sediments, and Quaboag River water and sediments.

B. Management of Migration

1. Use of natural attenuation to achieve ground water cleanup levels;
2. Ground water monitoring of existing wells on the PSC Resources, Inc. property and of monitoring wells adjacent to the property;
3. Sediment sampling of portions of the wetland and the Quaboag River, and where ground water discharges to the wetland and the Quaboag River;
4. Surface water sampling in areas adjacent to the wetland and in the Quaboag River; and
5. Five-year site reviews to assess site conditions, contaminant distributions, and any associated site hazards.

The 30% Remedial Design shall include the results of investigations conducted to evaluate alternative remedial technologies which may be employed during the Remedial Action. Technologies to be investigated may include, but will not necessarily be limited to: ex situ stabilization; segregation of media (lagoon sediments, wetland sediments, soils) for

stabilization; pretreatment of "hot spots" for specific contaminants before stabilization; low permeability cap over the stabilized mass; and on-site disposal of property structures. If the Remedial Action proposed in the 30% Remedial Design submitted pursuant to the SOW differs significantly from the selected remedy in the ROD with respect to the scope, performance or cost, EPA must approve all significant differences after reasonable opportunity for review and comment by the Commonwealth. If EPA approves significant differences, EPA shall proceed in accordance with 40 C.F.R. Section 300.435(c)(2). If any significant differences are not approved by EPA, the components of the ROD, in Section X thereof, shall be implemented as stated therein.

11. In order to expedite Remedial Design at the Site, Performing Settling Defendants have agreed to commence and perform Remedial Design activities through submission of the 30% Design submission identified in Section V.C. of the SOW as a contractual obligation effective upon their receipt of notice of the signature of the EPA Regional Administrator on this Consent Decree. However, if the Consent Decree is disapproved in writing by the Court before completion of all work provided for in this Paragraph 11, the Performing Settling Defendants may suspend performance as of the date of written disapproval by the Court. Upon the effective date of this Consent Decree, all Future Response Costs incurred prior to the entry of the Consent Decree shall be reimbursed after entry in accordance with Section XVIII (Reimbursement of Response Costs).

12. All Remedial Design activities to be performed by Performing Settling Defendants pursuant to this Consent Decree shall be under the direction and supervision of a qualified contractor. Within 1 business day of their delivery to EPA of signature pages for the Consent Decree, Performing Settling Defendants shall provide EPA, with a copy to DEP, a list and description of qualifications of persons proposed by Performing Settling Defendants to be Supervising Contractor, to be used in carrying out the Remedial Design activities to be performed pursuant to this Consent Decree. Within 30 days from the later of Performing Settling Defendants' receipt of notice from EPA as to those persons on the list referenced above in this Paragraph not disapproved by EPA (subject to the provision regarding disapproval set forth below), or the Performing Settling Defendants' receipt of notice of the signature of the EPA Regional Administrator on this Consent Decree, the Performing Settling Defendants shall notify EPA and the Commonwealth, in writing, of the name, title, and qualifications of the Supervising Contractor to be used in carrying out the Remedial Design activities to be performed pursuant to this Consent Decree. Performing Settling Defendants shall notify the EPA and the Commonwealth of the names of any other contractors and/or subcontractors that may be employed for the Remedial Design within 30 days from the later of their receipt of notice of EPA's non-disapproval of persons on the Performing Settling Defendants' list of potential Supervising Contractors, or the Performing

Settling Defendants' receipt of notice of the signature of the EPA Regional Administrator on this Consent Decree. Selection of any such contractor shall be subject to disapproval by EPA. If EPA disapproves of the selection of any contractor, the Performing Settling Defendants shall submit a list of contractors, including their qualifications, to EPA and the Commonwealth within 21 days of receipt of the disapproval of the contractor previously selected. Upon EPA's response, the Performing Settling Defendants may at their election select any one not disapproved on the list. After selection of a contractor, Performing Settling Defendants shall notify EPA and the Commonwealth of the name of the contractor within 14 working days following receipt of notice.

13. a. All Remedial Action and Operation and Maintenance activities to be performed by the Performing Settling Defendants pursuant to this Consent Decree shall be under the direction and supervision of a qualified contractor. Within 1 business day of submittal of the final Remedial Design, Performing Settling Defendants shall provide EPA, with a copy to DEP, a list and description of qualifications of persons proposed by Performing Settling Defendants to be Supervising Contractor, to be used in carrying out the Remedial Action activities and/or the Operation and Maintenance activities to be performed pursuant to this Consent Decree. Within 60 days from the later of Performing Settling Defendants' receipt of notice from EPA as to those persons on the list referenced above in this Paragraph not

disapproved by EPA, or the Performing Settling Defendants' receipt of notification of EPA approval or modification of the final Remedial Design, the Performing Settling Defendants shall notify EPA and the Commonwealth in writing of the name, title and qualifications of the Supervising Contractor and the names of contractors and/or subcontractors that may be employed in carrying out the Remedial Action activities and/or the Operation and Maintenance activities to be performed pursuant to this Consent Decree. Selection of any such contractor and/or subcontractor shall be subject to disapproval by EPA in accordance with the provisions of Paragraph 12.

b. All Remedial Action and Operation and Maintenance activities to be performed by the Performing Settling Defendants pursuant to this Consent Decree and under the direction and supervision of the Supervising Contractor shall also be subject to quality control by an independent, qualified contractor. Within 30 days after notification of EPA approval or modification of the final Remedial Design, the Performing Settling Defendants shall notify EPA and the State, in writing, of the name, title, and qualifications of the Independent Quality Assurance Team (IQAT) that shall be responsible for examining and testing various materials, procedures, and equipment during Remedial Action and Operation and Maintenance. The IQAT shall be retained by the Performing Settling Defendants and shall be from an independent testing and inspection organization. The IQAT shall function to (a) direct and perform tests for quality assurance

inspection activities; (b) verify that the Construction QC Plan is implemented; (c) perform independent on-site inspections of the Work to assess compliance with project standards; (d) verify that equipment and testing procedures meet the test requirements; and (e) report to the Performing Settling Defendants, EPA and the Commonwealth the results of all inspections.

14. The following Work shall be performed by Performing Settling Defendants:

a. In accordance with the time periods specified in the SOW, Performing Settling Defendants shall submit for review, modification and/or approval by EPA after a reasonable opportunity for review and comment by the Commonwealth, work plan(s) for the Remedial Design at the Site (Remedial Design Work Plan(s) or RD Work Plan(s)). The work plan(s) shall be developed in conformance with the ROD, the SOW, and any applicable interim or final (but not draft) guidance documents issued by EPA.

b. The RD Work Plan(s) shall include the documents specified in the SOW, and shall contain schedules in accordance with the time limits specified in the SOW for design of the Remedial Action.

c. Performing Settling Defendants shall implement the Work detailed in the RD Work Plan(s) upon its (their) approval or modification by EPA pursuant to the procedures in Section XII. Unless otherwise directed by EPA, the Performing Settling Defendants shall not commence field activities until approval or modification by EPA of these Work Plan(s). Upon such approval or

modification, these Work Plan(s) and any submissions required thereunder or under this Consent Decree shall be enforceable under this Consent Decree. All Remedial Design activities shall be conducted in accordance with the National Contingency Plan, any applicable interim or final (but not draft) guidance documents issued by EPA, and the requirements of this Consent Decree, including the standards, specifications and schedule contained in the SOW and these Work Plan(s).

d. In accordance with the time periods specified in the SOW, Performing Settling Defendants shall submit for review, modification and/or approval by EPA, after a reasonable opportunity for review and comment by the Commonwealth, work plan(s) for the Remedial Action and Operation and Maintenance at the Site (RA Work Plan(s) and O&M Plan(s), respectively). These Work Plan(s) shall be developed in conformance with the ROD, the SOW and the EPA Superfund Remedial Design and Remedial Action guidance and any applicable interim or final (but not draft) guidance documents.

e. The RA Work Plan(s) and O&M Plan(s) shall include the documents specified in the SOW, and shall contain schedules in accordance with the time limits identified in the SOW for implementation of the Remedial Action and Operation and Maintenance.

f. Performing Settling Defendants shall implement the Work detailed in the RA Work Plan(s) upon approval or modification of the RA Work Plan(s) by EPA pursuant to the

procedures in Section XII. Upon approval or modification by EPA, the RA Work Plan(s) and any submissions required thereunder or under this Consent Decree shall be enforceable under this Consent Decree. All Remedial Action activities shall be conducted in accordance with the National Contingency Plan, and any applicable interim or final (but not draft) guidance documents issued by EPA, and the requirements of this Consent Decree, including the standards, specifications and schedules contained in the SOW and the RA Work Plan(s). Performing Settling Defendants shall implement the Work detailed in the O&M Plan(s) upon approval or modification of the O&M Plan(s) by EPA pursuant to the procedures in Section XII. Upon approval or modification by EPA, the O&M Plan(s) and any submissions required thereunder or under this Consent Decree shall be enforceable under this Consent Decree. All Operation and Maintenance activities shall be conducted in accordance with the National Contingency Plan, any additional guidance provided by EPA, and the requirements of this Consent Decree, including the standards, specifications and schedules contained in the SOW and the O&M Plan(s).

15.. The Work performed by Performing Settling Defendants pursuant to this Consent Decree must, at a minimum, achieve the following Performance Standards:

a. Ground Water Cleanup Levels: Performing Settling Defendants shall achieve Interim Cleanup Levels for ground water contamination, as specified below. The Performing Settling Defendants must demonstrate that they have achieved compliance

for a period of three consecutive years, according to the evaluation procedure defined in 40 C.F.R. Section 264.97. If EPA determines, after reasonable opportunity for review and comment by the Commonwealth, that the cumulative risks posed by the residual contaminants after achievement of the Interim Cleanup Levels are not within EPA's risk management standard for carcinogens and non-carcinogens, then EPA, after reasonable opportunity for review and comment by the Commonwealth, will establish Modified Cleanup Levels, and the Performing Settling Defendants shall continue the Remedial Action until the Modified Cleanup Levels are achieved, or the remedy is otherwise deemed protective by EPA, after reasonable opportunity for review and comment by the Commonwealth. These Modified Cleanup Levels shall constitute the Final Cleanup Levels for the Site ground water and shall be considered Performance Standards for any Remedial Action regarding site ground water.

The point of compliance for ground water shall be at and beyond the edge of the Waste Management Area as defined in the SOW.

Ground Water Cleanup Levels

<u>Contaminant of Concern</u>	<u>Cleanup Level</u>
Bis(2-ethylhexyl)phthalate	6 ppb
Vinyl Chloride	2 ppb
1,1-Dichloroethane	3,600 ppb
Cis-1,2-Dichloroethylene	70 ppb
Trans-1,2-Dichloroethylene	100 ppb
1,1,1-Trichloroethane	200 ppb
Methylene Chloride	5 ppb
Trichloroethylene (TCE)	5 ppb
Tetrachloroethylene (PCE)	5 ppb
Benzene	5 ppb
2-Butanone (MEK)	350 ppb
Acetone	3,500 ppb

Lead

15 ppb

The ROD estimates that these levels will be achieved via natural attenuation within 4-11 years after completion of the selected source control remedy.

b. Soil and Sediment Cleanup Levels:

i. Cleanup levels for lagoon sediments and wetland sediments are listed below:

Lagoon Sediments

<u>Contaminant of Concern</u>	<u>Cleanup Level</u>
Bis(2-ethylhexyl)phthalate	368 ppm
Total cPAHs ^e	100 ppm
Total ncPAHs	1,206 ppm
1,1-Dichloroethane	711 ppm
1,1,1-Trichloroethane	200 ppm
Trichloroethylene (TCE)	4 ppm
Tetrachloroethylene (PCE)	12 ppm
Methylene Chloride	1 ppm
Benzene	3 ppm
Acetone	50 ppm
Lead	500 ppm

Wetland Sediments

<u>Contaminants of Concern</u>	<u>Cleanup Level</u>
Total PCBs	1 ppm
Total PAHs	10 ppm
Arsenic	12 ppm
Lead	375 ppm
Zinc	550 ppm

For all sediments exceeding these levels, Performing Settling Defendants shall, in accordance with the requirements of the SOW, excavate and consolidate them with property soils for stabilization followed by placement of a cap.

ii. Cleanup levels for unsaturated property soils are listed below:

Unsaturated Property Soils

<u>Contaminants of Concern</u>	<u>Cleanup Level</u>
Total PCBs	1 ppm
Total nCPAHs	151 ppm
1,1-Dichloroethane	243 ppm
Cis-1,2-Dichloroethylene ^c	5 ppm
Trans-1,2-Dichloroethylene ^c	7 ppm
1,1,1-Trichloroethane	135 ppm
Trichloroethylene (TCE)	1 ppm
Tetrachloroethylene (PCE)	2 ppm
Benzene	1 ppm
Lead	500 ppm

Performing Settling Defendants shall stabilize all unsaturated property soils exceeding any of the individual contaminant cleanup levels to achieve the performance standards specified in f., below.

c. Property Structures: Prior to the stabilization treatment process, Performing Settling Defendants shall decontaminate site buildings and structures, if necessary, until they are deemed suitable for disposal. The demolition and disposal activities shall take place once the surface decontamination work is completed. A determination shall be made as to whether the wastes generated by the decontamination activities are hazardous. If the wastes are determined to be hazardous, they shall be disposed offsite in accordance with applicable Federal and State regulations, including OSWER DIRECTIVE 9834.11, Revised Procedures for Planning and Implementing Off-site Response Actions.

d. Air: The Performing Settling Defendants shall develop and set ambient levels, for EPA approval after reasonable opportunity for review and comment by the Commonwealth, for the

Site's contaminants of concern as part of the Remedial Design study. The point of compliance for air, consistent with the NCP, shall be the perimeter fenceline to be established during remedial action for access control and security purposes.

e. Surface Water: The Performing Settling Defendants shall develop and set surface water levels for the Site's contaminants of concern as part of the Remedial Design study. The point of compliance for surface waters, consistent with the NCP, shall be the point where the release enters the surface waters.

f. Performance Criteria/Requirements for Stabilization Treatment: To ensure the effectiveness of the stabilization treatment in meeting all Source Control objectives, Performing Settling Defendants shall meet the following technical criteria for contaminant mobility and structural integrity of the stabilized mass:

- i. The average permeability shall be a maximum of 10^{-6} cm/s, or as required to achieve the leachability criteria, using flexible wall triaxial cell permeability test (ASTM D 5084-90, or technical equivalent).
- ii. The unconfined compressive strength (UCS) shall be a minimum of 50 psi or as determined to support the specific cap design and the equipment that will be used on the PSC Resources Property.

- iii. Organic contaminants in leachate, using a 5-day modified American Nuclear Society Test (ANS-16.1) using upgradient site ground water as the extraction fluid, or equivalent method, shall comply with the C_p values listed below. Lead shall be less than 5 mg/l. A minimum leachability index of 6.0 shall be achieved by the stabilized mass.

C_p -CONCENTRATIONS OF THE INFILTRATION (LEACHATE-PPB)

<u>Medium</u>	<u>Contaminant of Concern</u>	<u>C_p</u>
Property Soil	Trichloroethylene	59 ppb
	Tetrachloroethylene	59 ppb
	Benzene	59 ppb
	1,1,1-Trichloroethane	8,857 ppb
	Total ncPAHs	1,158 ppb
	1,1-Dichloroethane	81,165 ppb
	Cis-1,2-Dichloroethylene	827 ppb
	Trans-1,2-Dichloroethylene	1,181 ppb
Lagoon Sediment	Bis(2-ethylhexyl)phthalate	97 ppb
	Trichloroethylene	82 ppb
	Tetrachloroethylene	82 ppb
	Methylene Chloride	82 ppb
	Benzene	82 ppb
	1,1,1-Trichloroethane	3,292 ppb
	Total ncPAHs	2,321 ppb
	1,1-Dichloroethane	59,304 ppb
	Acetone	57,657 ppb

- iv. Organic and inorganic contaminants in leachate, using the Toxicity Characteristic Leaching Procedure (TCLP), shall comply with the contaminant levels listed in Table I of 40 C.F.R. § 261.24 - Toxicity Characteristic.

- g. Institutional Controls: In accordance with Section X,

Performing Settling Defendants shall implement institutional controls, such as deed restrictions, to ensure that future use of ground water and future development of land are prohibited until cleanup levels, specified above, have been attained, and to ensure the integrity and effectiveness of the Work thereafter.

h. Other standards identified as ARARs in the ROD are hereby incorporated by reference and must be attained, as if set forth fully herein.

16. Performing Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans, or the O&M Plan(s) constitutes a warranty or representation of any kind by Plaintiffs that compliance with the Work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards. Performing Settling Defendants' compliance with the Work requirements shall not foreclose Plaintiffs from seeking their compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

17. Performing Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator and the DEP Project Manager of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site

shipments when the total volume of all such shipments will not exceed 10 cubic yards. Performing Settling Defendants shall, prior to any in-state shipment of Waste Material from the Site, provide written notification to the EPA Project Manager and the DEP Project Manager of such shipment of Waste Material. Notification of such off-site shipments will be made in compliance with all applicable federal and state regulations.

a. The Performing Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Performing Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Performing Settling Defendants following the award of the contract for Remedial Action construction. The Performing Settling Defendants shall provide the information required by Paragraph 17.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. For purposes of this Paragraph 17, Waste Material

shall not include any material eligible for disposal at a RCRA Subtitle D facility.

VII. ADDITIONAL RESPONSE ACTIONS

18. In the event that (a) EPA determines, after reasonable opportunity for review and comment by the Commonwealth, (b) the Commonwealth, as a result of a judicial decree in any action by the Commonwealth to enforce an ARAR, determines, or (c) the Performing Settling Defendants propose that additional response actions are necessary to meet the Performance Standards, or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided to the Project Coordinators designated pursuant to this Consent Decree. The Parties agree that additional response actions necessary to meet the Performance Standards shall include, without any intention to limit other possible additional response actions, any alternative response actions proposed if natural attenuation fails to meet Performance Standards within a time frame acceptable to EPA, after reasonable opportunity for review and comment by DEP.

19. Within 30 days of receipt of written notice from EPA, the Commonwealth or Performing Settling Defendants pursuant to Paragraph 18 that additional response actions are necessary (or such longer time as may be specified by EPA), Performing Settling Defendants shall submit to EPA and the State, for approval by EPA, after reasonable opportunity for review and comment by the Commonwealth, a work plan for the additional response actions. The plan shall conform to this Consent Decree, the NCP, EPA

Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0-4A), the judicial decree in any action by the Commonwealth to enforce an ARAR, and other guidances identified by EPA in the SOW or prior to submission of the work plan for additional response actions. Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval), Performing Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein.

20. Any additional response actions that Performing Settling Defendants propose are necessary to meet the Performance Standards, or to carry out the remedy selected in the ROD, shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State. If authorized by EPA, Performing Settling Defendants shall complete all such additional response actions in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XII (Submissions Requiring Agency Approval).

21. Performing Settling Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards, or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Paragraphs 70-73 of this Consent Decree.

VIII. EPA PERIODIC REVIEW

22. Prior to EPA's issuance of a notice of Completion of the

Work pursuant to Paragraph 54.b, Performing Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

23. If required by Sections 113(k)(2) or 117 of CERCLA, Performing Settling Defendants and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region I, or his/her delegate will determine, after reasonable opportunity for review and comment by the Commonwealth, in writing whether further response actions are appropriate.

24. If the Regional Administrator, EPA Region I, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, or during any period for submission of written comments pursuant to Paragraph 23, indicates that the Remedial Action is not protective of human health and the environment, then, subject to Section XXIII (Covenants Not to Sue by Plaintiffs) of this Consent Decree, the EPA, after reasonable opportunity for review and comment by the Commonwealth, may take or require such action pursuant to CERCLA or other applicable authorities against any

person, including but not limited to Performing Settling Defendants.

IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

25. Performing Settling Defendants shall use quality assurance, quality control, and chain of custody procedures throughout the performance of the Work in accordance with the SOW, EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984; (EPA 330/9-78-001-R); and subsequent amendments to such guidelines and guidances upon notification by EPA to Performing Settling Defendants of such amendment. Amended guidelines and guidances shall apply only to procedures conducted after such notification. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with a Quality Assurance Project Plan ("QAPP") submitted pursuant to the SOW, and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Settling Defendants shall use their best efforts to ensure that EPA and Commonwealth personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Settling Defendants in implementing this Consent Decree. In addition, Performing Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant

to the QAPP for quality assurance monitoring. Performing Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods.

Performing Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

26. Upon request of EPA or the Commonwealth, the Performing Settling Defendants shall allow split or duplicate samples to be taken by EPA and the Commonwealth or their authorized representatives. Performing Settling Defendants shall notify EPA and the Commonwealth not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the Commonwealth shall have the right to take any additional samples that EPA or the Commonwealth deem necessary. Upon request, EPA and the Commonwealth shall allow the Performing Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Performing Settling Defendants' implementation of the Work.

27. Performing Settling Defendants shall submit to EPA and the Commonwealth a total of 10 copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise (6 copies to EPA, 4 copies to the Commonwealth).

28. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, Chapter 21E, Chapter 21C and any other applicable statutes or regulations.

X. ACCESS AND INSTITUTIONAL CONTROLS

29. Commencing upon the date of Performing Settling Defendants' receipt of notice of the signature of the EPA Regional Administrator on this Consent Decree, the Performing Settling Defendants agree to provide the United States, the Commonwealth, and their representatives, including, but not limited to, EPA and DEP and their respective contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Performing Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing

additional response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Performing Settling Defendants or their agents, consistent with Section XXVII; and

g. Assessing Performing Settling Defendants' compliance with this Consent Decree.

30. Performing Settling Defendants have arranged for access by agreement with the Owner Settling Defendant as set forth in Access and Institutional Controls agreement as set forth in Appendix J. To the extent that other rights of access to the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Performing Settling Defendants shall use "best efforts" to secure from such persons access for Performing Settling Defendants, as well as for the United States and the Commonwealth and their representatives, including, but not limited to, their contractors as necessary to effectuate implementation of this Consent Decree. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of Access; provided that in no event shall the Performing Settling Defendants be obligated hereunder to pay money, directly or indirectly, in consideration of access, to or for the benefit of any of the "Corporate Owners" listed at page 3 of the ROD or any of their successors and assigns. If any Access required to complete the

Work is not obtained within 45 days of the date of Performing Settling Defendants' receipt of notice of the signature of the EPA Regional Administrator on the Consent Decree, or within 45 days of the date EPA notifies the Performing Settling Defendants in writing that additional Access beyond that previously secured is necessary, Performing Settling Defendants shall promptly notify the United States and the Commonwealth in writing, and shall include in that notification a summary of the steps Performing Settling Defendants have taken to attempt to obtain Access. The United States or the Commonwealth may, as they deem appropriate, assist Performing Settling Defendants in obtaining Access. Performing Settling Defendants shall reimburse the United States or the Commonwealth, in accordance with the procedures in Section XVIII (Reimbursement of Response Costs), for all costs incurred by the United States or the Commonwealth in obtaining Access, including, but not limited to, attorneys fees and the amount of just compensation.

31. To the extent that the Site or any other property for which Institutional Controls are required for the implementation of this Consent Decree is owned or controlled by persons other than Performing Settling Defendants, Performing Settling Defendants shall use "best efforts" to secure from such persons Institutional Controls, as specified in the SOW. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of Institutional Controls; provided that in no event shall the Performing Settling

Defendants be obligated hereunder to pay money, directly or indirectly, in consideration of Institutional Controls, to or for the benefit of any of the "Corporate Owners" listed at page 3 of the ROD or any of their successors and assigns. If any Institutional Controls required to complete the Work are not obtained within the schedule established pursuant to the SOW or within 45 days of the date EPA, after reasonable opportunity to review and comment by the Commonwealth, notifies the Performing Settling Defendants in writing that additional Institutional Controls beyond those previously secured is necessary, Performing Settling Defendants shall promptly notify the United States and the Commonwealth in writing, and shall include in that notification the following information:

a. the identity of the person making the request for assistance and his or her relationship to the site or location;

b. the nature and location of the institutional control(s) that he or she intends to establish, the anticipated duration of the institutional control(s) and the reason(s) such institutional control(s) are necessary to perform the response actions;

c. the identity of the person or persons who own or operate the site or location to which the United States or Commonwealth's assistance for establishing institutional control(s) is sought;

d. the results of any and all attempts to establish such institutional control(s); and

e. certification that a copy of the request for assistance has been sent to each person or persons who own or operate such sites or locations.

The United States or the Commonwealth may as they deem appropriate, assist Performing Settling Defendants in obtaining Institutional Controls.

32. Notwithstanding any provision of this Consent Decree, the United States and the Commonwealth retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, Chapter 21E, Chapter 21C, and any other applicable statute or regulations.

XI. REPORTING REQUIREMENTS

33. In addition to any other requirement of this Consent Decree, Performing Settling Defendants shall submit to EPA 6 copies and the Commonwealth 4 copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Performing Settling Defendants or their contractors or agents in the previous month in compliance with this Consent Decree; (c) identify all work plans, plans and other deliverables required by this Consent Decree that were completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other

information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Performing Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Performing Settling Defendants shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month commencing with the calendar month following the month during which the Performing Settling Defendants receive notice of the signature on this Consent Decree by the EPA Regional Administrator until EPA notifies the Performing Settling Defendants pursuant to Paragraph 53.b of Section XVI (Certification of Completion), unless otherwise agreed in writing by EPA, after reasonable opportunity for review and comment by DEP. If requested by EPA or the Commonwealth, Performing Settling Defendants shall also provide briefings for EPA and the Commonwealth to discuss the progress of the Work.

34. The Performing Settling Defendants shall notify EPA and the Commonwealth of any change in the schedule described in the monthly progress report for the performance of any activity,

including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

35. Upon the occurrence of any event during performance of the Work that Performing Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, and/or Section 304 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. § 11004, 310 CMR 40.0300 and other applicable reporting requirements, Performing Settling Defendants shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator designated pursuant to Section XIII (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Unit, Region I, United States Environmental Protection Agency. In addition to the foregoing, Performing Settling Defendants shall also notify orally the State Project Coordinator. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304 and/or Chapter 21E, Section 7.

36. Within 20 days of the onset of such an event, Performing Settling Defendants shall furnish to Plaintiffs a written report, signed by the Performing Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30

days of the conclusion of such an event, Performing Settling Defendants shall submit a report setting forth all actions taken in response thereto.

37. Performing Settling Defendants shall submit 6 copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Performing Settling Defendants shall simultaneously submit 4 copies of all such plans, reports and data to the State.

38. All reports and other documents submitted by Performing Settling Defendants to EPA or the Commonwealth (other than the monthly progress reports referred to above) which purport to document Performing Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Performing Settling Defendants.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

39. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the Commonwealth, shall in writing: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Performing Settling Defendants modify the submission; (e) disapprove, in whole or in part, the

submission, notifying Performing Settling Defendants of deficiencies and of EPA's decision that EPA will modify the submission; or (f) any combination of the above.

40. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 39(a), (b) or (c), or (e), Performing Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXI (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 39(c) or (e) and the submission has a material defect, EPA and the Commonwealth retain their right to seek stipulated penalties, as provided in Section XXII.

41. a. Upon receipt of a written notice of disapproval pursuant to Paragraph 39(d), Performing Settling Defendants shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item, or appropriate portions thereof, for approval. During this period, if and to the extent practicable, Project Coordinators for the Performing Settling Defendants, EPA and the Commonwealth will make themselves available to discuss the matters addressed in EPA's notice. Any stipulated penalties applicable to the submission, as provided in Section XXII, shall accrue during the 14-day period or otherwise specified period but

shall not be payable unless the resubmission is disapproved or modified by EPA due to a material defect identified in EPA's written notice as provided in Paragraph 39.

b. Notwithstanding the receipt of a written notice of disapproval pursuant to Paragraph 39(d) or (e), Performing Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Performing Settling Defendants of any liability for stipulated penalties under Section XXII (Stipulated Penalties).

42. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Performing Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item, after reasonable opportunity for review and comment by the Commonwealth. Performing Settling Defendants shall implement any such plan, report, or item as amended or developed by EPA, subject only to their right to invoke the procedures set forth in Section XXI (Dispute Resolution).

43. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Performing Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Performing Settling Defendants invoke the dispute resolution

procedures set forth in Section XXI (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XXI (Dispute Resolution) and Section XXII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXII.

44. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA after reasonable opportunity for review and comment by the Commonwealth, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XIII. PROJECT COORDINATORS

45. Within 20 days of lodging this Consent Decree, Performing Settling Defendants, the Commonwealth and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least 5 working days before the changes occur, unless impracticable, but

in no event later than the actual day the change is made. The Performing Settling Defendants' Project Coordinator shall be subject to disapproval by EPA after consultation with the Commonwealth and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Performing Settling Defendants' Project Coordinator shall not be an attorney for any of the Performing Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. In addition, EPA will designate, in writing, a Geographic Section Chief who will be responsible for all the findings of approval/disapproval, and comments on all major project deliverables.

46. Plaintiffs may designate other representatives, including, but not limited to, EPA and Commonwealth employees, and federal and Commonwealth contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt, conduct or direct any Work required by this Consent Decree, and to take any necessary

response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

47. In addition to the meetings required by the SCW during the construction period, EPA's Project Coordinator and the Performing Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis during non-construction periods. DEP's Project Coordinator shall be provided by EPA with reasonable advance notice of, and shall have the right to participate in, all such meetings. Such meetings may be held by telephone conference or in person.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

48. Within 90 days of lodging of this Consent Decree, Performing Settling Defendants shall establish and maintain financial security in the amount of \$4,000,000 in one of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit;
- c. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Performing Settling Defendants; or
- d. A demonstration that one or more of the Performing Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f)(1)-(3).

49. If the Performing Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 48.c of this Consent Decree, Performing Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f), as referenced above. If Performing Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 48.c or 48.d, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f)(1)-(3) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the Commonwealth, determines at any time that the financial assurances provided pursuant to this Section are inadequate, EPA shall notify Performing Settling Defendants of the basis of its determinations. Performing Settling Defendants shall, within 30 days of receipt of written notice of EPA's determination, obtain and present to EPA for approval, after opportunity for review and comment by the Commonwealth, one of the other forms of financial assurance listed in Paragraph 48 of this Consent Decree. Performing Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XV. TRUST FUND

50. Within ten (10) days after Performing Settling

Defendants' receipt of notice of the EPA Regional Administrator's signature on this Consent Decree, Performing Settling Defendants shall present to EPA, with a copy to the Commonwealth, for approval a proposed form of trust agreement (the "Trust Agreement") establishing the PSC Resources Site Trust Fund (the "Trust Fund") and shall notify EPA and the Commonwealth of the identity and qualifications of the trustee(s). The Trust Agreement shall assure that, pending certification of completion of the Work pursuant to Paragraph 54.b., monies contributed to the Trust Fund by New Jersey, the De Minimis Settling Defendants and the Settling Federal Agencies shall be used for the exclusive purpose of financing the obligations of the Performing Settling Defendants under this Consent Decree, subject to limitation set forth in this paragraph below. EPA shall notify Performing Settling Defendants, in writing, of its approval or disapproval after reasonable opportunity for review and comment by the Commonwealth of the proposed Trust Agreement, any part thereof, or the trustee(s). Within thirty days of any disapproval of the Trust Agreement or the Trustee, the Performing Settling Defendants shall submit a revised Trust Agreement to EPA or shall provide a notice of dispute pursuant to Section XXI (Dispute Resolution). Within ten working days of EPA's approval of the Trust Agreement, or within ten working days after resolution of any dispute regarding the Trust Agreement under which the Trust Agreement is approved, Performing Settling Defendants shall provide EPA and the Commonwealth with a copy of the fully

executed Trust Agreement which shall be an executed version of the approved form. Money paid into the Trust Fund shall be used solely to pay proper and necessary expenses pursuant to this Consent Decree, including expenses of administering the Trust. The Trust Fund may not be used to pay stipulated penalties that may be required to be paid pursuant to Section XXII (Stipulated Penalties) and shall not be used to pay attorneys' fees or other litigation costs of the Performing Settling Defendants.

51. Notwithstanding any provision in the Trust Agreement, Performing Settling Defendants shall be jointly and severally liable for compliance with this Consent Decree. Performing Settling Defendants shall provide EPA and the Commonwealth with written notice at least ten (10) days in advance of any proposed change in the Trust Agreement or of the Trustee. Neither EPA nor the Commonwealth, through their acceptance of the terms and conditions of the Trust Agreement or otherwise, guarantees the monetary sufficiency of the Trust Fund nor the legal sufficiency of the Trust Agreement.

52. Any money remaining in the Trust Fund upon notification by EPA pursuant to Paragraph 54.b, after reasonable opportunity for review and comment by the Commonwealth, that all of the Work has been satisfactorily completed and all Past Response Costs and Future Response Costs reimbursed in accordance with this Consent Decree, shall be returned to Performing Settling Defendants in accordance with the terms of the Trust Agreement.

XVI. CERTIFICATION OF COMPLETION53. Completion of the Remedial Action

a. Within 90 days after Performing Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA and the Commonwealth. If, after the pre-certification inspection, the Performing Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA and the Commonwealth for approval, pursuant to Section XII (Submissions Requiring Agency Approval) within 60 days of the inspection. In the report, a registered professional engineer and the Performing Settling Defendants' Project Coordinator shall sign and seal a written statement that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional civil engineer registered in the Commonwealth. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or the Performing Settling Defendants' Project Coordinator:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel thoroughly and properly gather and evaluate the information submitted. I certify that, based on my inquiry of the

person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the Commonwealth, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Performing Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the Commonwealth, that the Remedial Action has been fully performed

in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Performing Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXIII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Performing Settling Defendants' non-Remedial Action obligations under this Consent Decree.

54. Completion of the Work

a. Within 90 days after Performing Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA and the Commonwealth. If, after the pre-certification inspection, the Performing Settling Defendants still believe that the Work has been fully performed, Performing Settling Defendants shall submit to EPA and the Commonwealth a signed and sealed written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or the Performing Settling Defendants' Project Coordinator:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified

personnel thoroughly and properly gather and evaluate the information submitted. I certify that, based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the Commonwealth, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Performing Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Performing Settling Defendants and after a reasonable opportunity for review and comment by the Commonwealth, that the Work has been fully performed in accordance with this Consent Decree, EPA will so

notify the Performing Settling Defendants in writing.

XVII. EMERGENCY RESPONSE

55. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Settling Defendants shall, subject to Paragraph 56, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately orally notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Performing Settling Defendants shall immediately notify the EPA Emergency Response Unit, Region I. The Performing Settling Defendants shall promptly orally notify the State Project Coordinator, and the DEP Emergency Response Branch, Western Regional Office (which notification shall not relieve Performing Settling Defendants of any additional notification requirement pursuant to Chapter 21E, if applicable), in addition to the reporting required by Section 103 of CERCLA, or Section 304 of EPCRA. Within 5 days after the notification, the Performing Settling Defendants shall provide to EPA, with a copy to the Commonwealth, notice, in writing, of the actions taken to prevent, abate or minimize the release or threat of release. Performing Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available

authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW and approved by EPA. In the event that Performing Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the Commonwealth takes such action instead, Performing Settling Defendants shall reimburse EPA and the Commonwealth all costs of the response action not inconsistent with the NCP, or the MCP with respect to the Commonwealth's costs, pursuant to Section XVIII (Reimbursement of Response Costs).

56. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to relieve Performing Settling Defendants of any otherwise applicable obligations to provide notification pursuant to federal or State law or to limit any authority of the United States, or the Commonwealth, to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVIII. REIMBURSEMENT OF RESPONSE COSTS

57. a. Within 30 days of the effective date of this Consent Decree, Performing Settling Defendants shall:

i. Pay to the United States \$2,581,497, plus interest, in reimbursement of Past Response Costs, by Electronic Funds transfer ("EFT" or wire transfer) to the U.S. Department of

Justice lockbox bank, referencing the EPA Region and Site/Spill ID # 01-38, and DOJ case number 90-11-2-982. Payment shall be made in accordance with instructions provided by the United States to the Performing Settling Defendants upon execution of the Consent Decree. Payment by EFT must be received at the DOJ lockbox bank by 4:00 P.M. (Eastern Time) to be credited on that day. Interest shall begin to accrue as of the date of signature on the Consent Decree by the Performing Settling Defendants.

ii. Pay to the United States \$153,720, plus Interest, for reimbursement of natural resource damages, in the form of a certified check payable to the Secretary of the Interior. The payment required by this Section shall be made in the form of a certified check made payable to "U.S. Department of the Interior," and referencing Account Number 14X1618 and the name of the Site. The Performing Settling Defendants shall forward the certified check by certified mail, return receipt requested to: Chief, Division of Finance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive Arlington, VA 22030. A copy of the check shall be sent to Mark Barash, Esquire, United States Department of the Interior, Office of the Solicitor, One Gateway Center, Suite 612, Newton Corner, MA 02158-2668. A copy of the check paid pursuant to this subparagraph, and any accompanying transmittal letter, shall be sent to the United States as provided in Section XXIX. (Notices and Submissions).

iii. Pay to the Commonwealth \$319,062, plus interest, in the form of a certified check or checks made payable

to the Commonwealth of Massachusetts, referencing PSC Resources Site, Palmer, Massachusetts in reimbursement of Past Response Costs incurred by the Commonwealth (to be credited to the Commonwealth's Environmental Challenge Fund, in accordance with M.G.L. c.29, Section 2J). Performing Settling Defendants shall send the certified check(s) to:

Kristine McMahon, Assistant Attorney General
Environmental Protection Division
Department of the Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

and shall send copies of the check(s) and transmittal letter(s) to the Commonwealth as specified in Section XXIX (Notices and Submissions). For purposes of paragraph (4) ("Interest Calculation") of 310 CMR 40.1220 ("Recovery of Response Action Costs Incurred in Response Actions"), this Consent Decree shall constitute the DEP's written request for payment of the amount set forth above. Interest shall begin to accrue at the statutory rate of twelve per cent (12%) per annum, pursuant to Chapter 21E, Section 13, as of the 45th day following the date of signature on the Consent Decree by Performing Settling Defendants. However, if more than 45 days elapse between the date of signature on the Consent Decree by the Performing Settling Defendants and lodging of this Consent Decree, interest to the Commonwealth shall be tolled from the 46th day after such date of signature until lodging of this Consent Decree, and shall begin accruing again upon lodging of this Consent Decree.

b. Within a reasonable time after the effective date of

this Consent Decree, not to exceed 180 days from the effective date of this Consent Decree, the United States on behalf of the Settling Federal Agencies shall cause to be transferred to the EPA Hazardous Substances Superfund as reimbursement of EPA Past Response Costs, \$244,253. Such payment shall reference CERCLA number 01-38 and DOJ Case Number 90-11-2-982, and shall send a copy of the record of payment to the U.S. Department of Justice and EPA in accordance with Section XXIX of this Consent Decree. Within a reasonable time after the effective date of this Consent Decree, not to exceed 180 days after the effective date of this Consent Decree, the United States on behalf of Settling Federal Agencies shall cause to be transferred to the Commonwealth as reimbursement of Commonwealth Past Response Costs, \$30,188 , plus interest, in the manner set forth above in Paragraph 57.a.iii.

c. On or before October 15, 1994, New Jersey will remit to an escrow agent designated by New Jersey \$3,500,000. Within ten days of the later of creation of the Trust Fund pursuant to the Trust Agreement or receipt of written notification of the effective date of the Consent Decree, New Jersey shall instruct the escrow agent to, and the escrow agent shall, transfer the funds held in escrow to the Trust Fund.

d. Within a reasonable time after the effective date of this Consent Decree, not to exceed 180 days after the effective date of this Consent Decree, Settling Federal Agencies shall pay, as an initial payment of their share of Performing Settling Defendants' Work Costs, \$625,152.73 to the PSC Resources

Site Trust Fund.

e. In the event that Performing Settling Defendants' Work Costs exceed \$7,354,738, Settling Federal Agencies shall be obligated to pay to the PSC Resources Site Trust Fund a sum equal to eight and one-half (8.5%) per cent of the amount by which the Performing Settling Defendants' Work Costs exceed \$7,354,738 (the "Overage Amount"). Performing Settling Defendants shall requisition the Settling Federal Agencies for payment of their share of the Overage Amount. All such requisitions shall comply with, and shall be submitted and paid in accordance with the provisions of this Paragraph.

f. Not more frequently than once each calendar year within the first two weeks of January (said yearly date is hereinafter referred to as the "Requisition Date"), Performing Settling Defendants may submit to Settling Federal Agencies a written requisition for payment by Settling Federal Agencies of their share of the Overage Amount outstanding as of the Requisition Date ("Requisition"). Notwithstanding the right of the Performing Settling Defendants to submit a Requisition to Settling Federal Agencies only once each calendar year, the obligation of Settling Federal Agencies under this paragraph for their share of the Overage Amount shall be cumulative and shall not be discharged until payment in full of the Settling Federal Agencies' entire share of the Overage Amount has been made to the PSC Resources Site Trust Fund. In the event that on any Requisition Date the Settling Federal Agencies' entire unpaid

share of the Overage Amount then outstanding does not equal or exceed \$50,000 (the "Minimum Requisition Amount"), Settling Federal Agencies shall have no obligation to pay a Requisition submitted at such time, provided, however, that the obligation of Settling Federal Agencies for their unpaid share of the Overage Amount carries forward until such time as Settling Federal Agencies' unpaid share of the outstanding Overage Amount equals or exceeds the Minimum Requisition Amount and a Requisition is submitted and paid. Notwithstanding anything to the contrary which may be contained herein, a final Requisition for the balance of Settling Federal Agencies' unpaid share of the Overage Amount may be submitted on the Requisition Date next following the completion of all response actions and the amount of this final Requisition may be less than the Minimum Requisition Amount. In no event shall the obligation of the Settling Federal Agencies for their share of the Overage Amount exceed eight and one-half (8.5%) per cent of \$25,000,000.00.

g. Each Requisition shall contain all of the information in and comply substantially with the form of Appendix I to this Consent Decree. In addition, each Requisition shall contain the following certification:

"Performing Settling Defendants state that the above described costs were properly incurred by Performing Settling Defendants and are consistent with the Consent Decree which is in effect on the date of this Requisition.

Performing Settling Defendants certify that payment of this Requisition will be accepted by Performing Settling Defendants as payment in full of the obligation of Settling Federal Agencies

under Paragraph 57 of the Consent Decree between the United States and the Commonwealth of Massachusetts and Performing Settling Defendants dated (date of entry) _____, 19____, with respect to all Performing Settling Defendants' Work Costs incurred by Performing Settling Defendants during the periods of time covered by this Requisition, with the exception of any Performing Settling Defendants' Work Costs incurred by any federal or state governmental agency or instrumentality (including the United States Environmental Protection Agency and the Massachusetts Department of Environmental Protection) during those periods of time which are not included on this Requisition and which are subsequently paid by Performing Settling Defendants."

The first Requisition submitted by Performing Settling Defendants shall be accompanied by a statement demonstrating that Performing Settling Defendants' Work Costs in an amount equal to \$7,354,738 have been incurred prior to the date of the first Requisition.

Settling Federal Agencies shall have the right to audit the books and records of Performing Settling Defendants upon request in order to verify Performing Settling Defendants' Work Costs; such request shall be made within thirty (30) days following receipt by Settling Federal Agencies of a Requisition.

h. Within a reasonable time after receipt of a Requisition, not to exceed 180 days after receipt of the Requisition, Settling Federal Agencies shall make payment of the Requisition amount payable to the PSC Resources Site Trust Fund.

i. In the event that the payments required by Paragraphs 57.e - 57.h are not made within 90 days of the Settling Federal Agencies' receipt of a Requisition, Settling

Federal Agencies shall pay interest on the unpaid balance at the rate of prime plus one percent per annum as the prime rate is reported in the Wall Street Journal, from time to time, on the date that interest would begin to accrue. Interest shall accrue at the rate specified through the date of the Settling Federal Agencies' payment.

j. Performing Settling Defendants reserve all rights and remedies that may be available if the Settling Federal Agencies fail to make timely payments under Paragraph 57.h and 57.i. The dispute resolution procedures set forth in Section XXI shall not be applicable to disputes between the Performing Settling Defendants and Settling Federal Agencies arising from the provisions of Paragraphs 57.d - 57.j.

k. As acknowledged by the Parties, the payment obligations imposed by this Consent Decree may require a Settling Federal Agency to seek appropriations to fund its payments. No provision of this Decree shall be interpreted as or constitute a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341.

l. Notwithstanding any other provision of this Consent Decree, the Parties agree that in the event that any Settling Federal Agency fails to complete payment under the provisions of this Consent Decree within 180 days of the date of entry of the Consent Decree, the settlement embodied in this Consent Decree as to that Agency shall be null and void upon written notification

by EPA to Settling Federal Agencies and Performing Settling Defendants; provided that such notification, after consultation with Performing Settling Defendants, shall be in the unreviewable discretion of EPA and DEP, and shall not be subject to Dispute Resolution under this Consent Decree. However, the Consent Decree shall remain in full force and effect as to a Settling Federal Agency if its payment is completed prior to receipt of EPA's written notification to a Settling Federal Agency.

Further, if the Consent Decree becomes null and void as to any Settling Federal Agency, the Performing Settling Defendants shall have no rights pursuant to this Consent Decree against that respective Settling Federal Agency; however, such voidance of the Consent Decree as to a Settling Federal Agency shall not affect any other rights Performing Settling Defendants would have against that Settling Federal Agency in the absence of the Consent Decree.

58. Performing Settling Defendants shall reimburse the United States for Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States and shall reimburse the Commonwealth for Future Response Costs not inconsistent with the National Contingency Plan or the MCP incurred by the Commonwealth in the following manner: Exclusive of Future Response Costs incurred pursuant to ¶ 99, Performing Settling Defendants shall reimburse the United States for all Future Response Costs not inconsistent with the NCP up to Four Hundred Fifty Five Thousand Dollars (\$455,000) in Future Response

Costs; if such Future Response Costs exceed Four Hundred Fifty Five Thousand Dollars (\$455,000) for the United States, the Performing Settling Defendants shall reimburse fifty percent (50%) of the United States' said Future Response Costs in excess thereof, except for those costs incurred pursuant to ¶ 99 as specified below. Exclusive of Future Response Costs incurred pursuant to ¶ 99, Performing Settling Defendants shall reimburse the Commonwealth for all Future Response Costs not inconsistent with the NCP or the MCP up to Forty Five Thousand Dollars (\$45,000) in Future Response Costs; if such Future Response Costs exceed Forty Five Thousand Dollars (\$45,000) for the Commonwealth, the Performing Settling Defendants shall reimburse fifty percent (50%) of the Commonwealth's said Future Response Costs in excess thereof, except for those costs incurred pursuant to ¶ 99 as specified below. For Future Response Costs incurred pursuant to paragraph 99, Performing Settling Defendants shall reimburse the United States for all such Future Response Costs not inconsistent with the NCP incurred by the United States and shall reimburse the Commonwealth for all such Future Response Costs not inconsistent with the NCP or the MCP incurred by the Commonwealth. On a periodic basis, the United States and/or the Commonwealth will each send Performing Settling Defendants a bill requiring payment that, for the United States, consists of a Region I standard oversight cost summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, and contracts)

incurred by EPA, DOJ, and their contractors, and, with respect to the Commonwealth, shall consist of a bill requiring payment that consists of costs in dollars by category of costs (including but not limited to contracts, payroll, laboratory costs and oversight costs) incurred by DEP, the Office of the Massachusetts Attorney General, and their contractors. Performing Settling Defendants shall make all payments within 30 days of Performing Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 59. The Performing Settling Defendants shall make all payments to EPA required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substances Superfund" and referencing the EPA Region and Site/Spill ID # 01-38, and DOJ case number 90-11-2-982. The Performing Settling Defendants shall forward the certified check(s) to EPA Region I, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251 and shall send copies of the check and transmittal letter to the United States as specified in Section XXIX (Notices and Submissions). The Performing Settling Defendants shall make all payments to the Commonwealth required by this Paragraph in the form of a certified check or checks made payable to "Commonwealth of Massachusetts" (to be credited to the Commonwealth's Environmental Challenge Fund, in accordance with M.G.L. c.29, Section 2J). The Performing Settling Defendants shall forward the certified check(s) to:

Kristine McMahon, Assistant Attorney General
Environmental Protection Division

Department of the Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

and shall send copies of the check and transmittal letter to the Commonwealth as specified in Section XXIX (Notices and Submissions).

59. Performing Settling Defendants may contest payment of any Future Response Costs under Paragraph 58 if they determine that the United States or the Commonwealth has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP, or the NCP or the MCP with respect to Commonwealth costs, provided such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed), or the Commonwealth (if the Commonwealth's accounting is being disputed), pursuant to Section XXIX (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Performing Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States or the Commonwealth in the manner described in Paragraph 57.a. Simultaneously, within 30 days of receipt of the bill, the Performing Settling Defendants shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Massachusetts and remit to that escrow account funds equivalent to the amount of the contested Future

Response Costs. The Performing Settling Defendants shall send to the United States, as provided in Section XXIX (Notices and Submissions), and the Commonwealth a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Performing Settling Defendants shall initiate the Dispute Resolution procedures in Section XXI. If the United States or the Commonwealth prevails in the dispute, within 10 working days after receipt of notice of the resolution of the dispute, the Performing Settling Defendants shall pay the sums due (with accrued interest) to the United States or the Commonwealth, if Commonwealth costs are disputed, in the manner described in Paragraph 57.a. If the Performing Settling Defendants prevail concerning any portion of the contested costs, the Performing Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the Commonwealth, if Commonwealth costs are disputed, in the manner described in Paragraph 57.a; Performing Settling Defendants shall be disbursed any balance of the escrow account. Unless a determination is made under this Paragraph in conjunction with the Dispute Resolution procedures of Section XXI

that the Performing Settling Defendants are not obligated to pay contested portions of the bill, the time for payment of the contested portions of the bill shall remain the original payment due date and interest shall accrue on any unpaid portions of the bill from the original payment due date. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Performing Settling Defendants' obligation to reimburse the United States and the Commonwealth for their Future Response Costs.

60. In the event that the payments required by Paragraph 57.a are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 58 are not made within 30 days of the Performing Settling Defendants' receipt of the bill, Performing Settling Defendants shall pay interest on the unpaid balance (a) if owed to EPA, at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607 and (b) if owed to the Commonwealth, at the statutory rate of twelve per cent (12%) per annum, pursuant to Chapter 21E, Section 13, as aforesaid. Performing Settling Defendants shall pay Future Response Costs within 30 days of receipt of the bill demanding such costs. In the event that Performing Settling Defendants do not make the Future Response Cost payments within 30 days of the Performing Settling Defendants' receipt of the bill, Performing Settling Defendants shall pay interest on Future Response Costs.

With respect to the EPA, the interest on Future Response Costs shall begin to accrue on the date of incurrence of the Future Response Costs. With respect to the Commonwealth, the interest on Future Response Costs shall begin to accrue on the 46th day following the Commonwealth's request for payment. Interest shall accrue at the rate specified through the date of the Performing Settling Defendants' payment. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Performing Settling Defendants' failure to make timely payments under this Section.

XIX. INDEMNIFICATION AND INSURANCE

61. The United States and the Commonwealth do not assume any liability by entering into this agreement or by virtue of (a) any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA or (b) any of Performing Settling Defendants' approvals for entry by the Commonwealth pursuant to Chapter 21E, Section 8. Performing Settling Defendants shall indemnify, save and hold harmless the United States, the Commonwealth, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Performing Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising

from (a) any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA or (b) any of Performing Settling Defendants' approvals for entry by the Commonwealth pursuant to Chapter 21E, Section 8. Further, the Performing Settling Defendants agree to pay the United States and the Commonwealth all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the Commonwealth based on acts or omissions of Performing Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the Commonwealth shall be held out as a party to any contract entered into by or on behalf of Performing Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Performing Settling Defendants nor any such contractor shall be considered an agent of the United States or the Commonwealth.

62. Performing Settling Defendants waive all claims against the United States and the Commonwealth and their officials, agents, employees, contractors, subcontractors and representatives for damages or reimbursement or for set-off of any payments made or to be made to the United States or the Commonwealth, arising from or on account of any contract, agreement, or arrangement between any one or more of Performing

Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Performing Settling Defendants shall indemnify and hold harmless the United States and the Commonwealth with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Performing Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

63. No later than 15 days before commencing any on-site Work, Performing Settling Defendants shall secure, and shall maintain for the duration of this Consent Decree comprehensive general liability insurance and automobile insurance with limits of five (5) million dollars, combined single limit naming as additional insured the United States and the Commonwealth. In addition, for the duration of this Consent Decree, Performing Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing Settling Defendants in furtherance of this Consent Decree. No later than 15 days before commencing any on-Site Work, Performing Settling Defendants shall provide to EPA and the Commonwealth certificates of such insurance and a copy of each insurance policy. Performing Settling Defendants shall resubmit such certificates

and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Performing Settling Defendants demonstrate by evidence satisfactory to EPA and the Commonwealth that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Performing Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XX. FORCE MAJEURE

64. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Performing Settling Defendants or of any entity controlled by Performing Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Performing Settling Defendants' best efforts to fulfill the obligation. The requirement that the Performing Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a

failure to attain the Performance Standards.

65. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Performing Settling Defendants shall notify orally (1) EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region I, and (2) DEP's Project Manager, or in the event that DEP's Project Manager is unavailable, DEP's Section Chief, Response and Remediation, within 48 hours of when Performing Settling Defendants first knew or should have known that the event might cause a delay. Within 5 working days thereafter, Performing Settling Defendants shall provide in writing to EPA and the Commonwealth: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Performing Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Performing Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Performing Settling Defendants shall include with any notice all available documentation supporting their

claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Performing Settling Defendants from asserting any claim of force majeure for that event. Performing Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

66. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the Commonwealth, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Performing Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Performing Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

67. If the Performing Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Performing Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Performing Settling Defendants complied with the requirements of Paragraphs 64 and 65, above. If Performing Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Performing Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XXI. DISPUTE RESOLUTION BETWEEN PLAINTIFFS AND SETTLING DEFENDANTS

68. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Settling Defendants or between the Commonwealth and Settling Defendants arising under or with respect to this Consent Decree. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 69 to 75. The Commonwealth may participate in such dispute resolution proceedings to the extent

specified in Paragraphs 69 to 75. Disputes between the Commonwealth and Settling Defendants are governed by Paragraphs 75 and 76. However, the procedures set forth in this Section shall not apply to actions by the United States or the Commonwealth to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

69. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 14 days from the date the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

70. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the Commonwealth a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed

under paragraph 73 or 74.

71. EPA, after reasonable opportunity for review and comment by the Commonwealth, and within fourteen (14) days after receipt of Settling Defendants' Statement of Position, will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. The Commonwealth may also serve a Statement of Position within the fourteen-day time limit set forth above in this Paragraph. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 73 or 74.

72. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 73 or 74, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 73 or 74.

73. Formal dispute resolution for disputes pertaining to the EPA's selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response

action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Settling Defendants, EPA or the Commonwealth.

b. The Director of the Waste Management Division, EPA Region I, will issue, after reasonable opportunity for review and comment by the Commonwealth, a final administrative decision resolving the dispute based on the administrative record described in Paragraph 73.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 73.c and 73.d. If such decision is not received by the Settling Defendants within 30 days of EPA's issuance of its Statement of Position pursuant to Paragraph 71, the accrual of stipulated penalties in connection with the dispute shall be stayed until Settling Defendants' receipt of such decision, at which point stipulated penalties will continue to accrue at the level at which they had been

stayed. Notwithstanding the foregoing, the stay of stipulated penalties in connection with a dispute shall not apply if Performing Settling Defendants fail to timely provide information, data or documentation relevant to the dispute if requested by EPA or required to be provided pursuant to the Decree, and such failure to disclose is the reason the EPA Waste Management Division Director is not able to issue a decision within 30 days.

c. Any administrative decision made by EPA pursuant to Paragraph 73.b shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file within 30 days a response to Settling Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 73.a.

74. Formal dispute resolution for disputes that neither

pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 70, the Director of the Waste Management Division, EPA Region I, after reasonable opportunity for review and comment by the Commonwealth, will issue a final decision resolving the dispute. If such decision is not received by the Settling Defendants within 30 days of EPA's issuance of its Statement of Position pursuant to Paragraph 71, the accrual of stipulated penalties in connection with the dispute shall be stayed until Settling Defendants' receipt of such decision, at which point stipulated penalties will continue to accrue at the level at which they had been stayed. Notwithstanding the foregoing, the stay of stipulated penalties in connection with a dispute shall not apply if Performing Settling Defendants fail to timely provide information, data or documentation relevant to the dispute if requested by EPA or required to be provided pursuant to the Decree, and such failure to disclose is the reason the EPA Waste Management Division Director is not able to issue a decision within 30 days. The Waste Management Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a notice of judicial appeal setting forth the

matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file within 30 days a response to Settling Defendants' notice of judicial appeal.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

75. Except as provided in Paragraphs 73.b, 74.a, and 76, the invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree not directly in dispute, unless EPA, after reasonable opportunity for review and comment by the Commonwealth, or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 85. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Stipulated Penalties).

76. Disputes solely between the Commonwealth and Settling Defendants.

a. Disputes arising under the Consent Decree between the Commonwealth and Performing Settling Defendants that relate to Future Response Costs owed to the Commonwealth shall exclusively be governed in accordance with Paragraph 3 ("Administrative Review") of 310 CMR 40.1220 ("Recovery of Response Action Costs Incurred in Response Actions"), subject to the following. Any requests for administrative review pursuant to said Paragraph 3 must be made in writing by Performing Settling Defendants to DEP, attention Section Chief, Cost Recovery Section or as otherwise provided in any request for payment by DEP. If, pursuant to its discretionary authority, DEP elects not to provide such administrative review and so notifies Performing Settling Defendants more than seven (7) days after receipt of such request, then the accrual of stipulated penalties in connection with the dispute shall be stayed during the period from and including the eighth day after DEP's receipt of such request until Performing Settling Defendants' receipt of such notice. Thereafter, stipulated penalties shall continue to accrue at the same level at which they had been accruing prior to having been stayed. If DEP elects to provide such administrative review and such administrative review is not completed within forty-five (45) days from the date initiated in writing by Performing Settling Defendants, then the accrual of Stipulated Penalties in connection with the dispute shall be stayed thereafter pending completion of such review. Thereafter, stipulated penalties shall continue to accrue at the same level at which they had been

accruing prior to having been stayed. Performing Settling Defendants shall not be precluded from initiating a proceeding in this Court to seek redress of said dispute, following such review, if any, provided that a notice seeking such proceeding is filed by Performing Settling Defendants with the Court and served on all the parties to the dispute within ten (10) days following Performing Settling Defendants' receipt of notice from DEP of DEP's election not to provide administrative review, or of a letter of summary concluding administrative review, as the case may be. Otherwise, the position of the Commonwealth as to the matter in dispute shall be binding upon Performing Settling Defendants. Such proceeding shall be governed by applicable principles of administrative law.

b. Disputes arising under the Consent Decree between the Commonwealth and Settling Defendants that relate to whether the Commonwealth has properly assessed (except for matters relating to Future Response Costs addressed in a., above) and/or calculated stipulated penalties shall be governed in the following manner. The procedures for resolving such disputes shall be the same as provided for in Paragraphs 69-75, except that each reference to EPA shall read as a reference to DEP; each reference to the Director of the Waste Management Division, EPA Region I, shall read as a reference to the Assistant Commissioner for the Bureau of Waste Site Cleanup of the DEP; each reference to the United States shall read as a reference to the Commonwealth; and each reference to the Commonwealth's reasonable

opportunity for review and comment shall be deleted.

XXII. STIPULATED PENALTIES

77. Performing Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 78, 79, and 80 to the United States and the Commonwealth for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX (Force Majeure). For all noncompliance except those addressed in Paragraph 89 of this Section, the United States shall receive 60% of stipulated penalties received, and the State shall receive 40% of stipulated penalties received. For all noncompliance addressed in Paragraph 89 of this Section, the State shall receive 60% of stipulated penalties received, and the United States shall receive 40% of stipulated penalties received. "Compliance" by Performing Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

78. The stipulated penalties listed below in this Paragraph shall be payable per violation per day to the United States and the State, collectively, for any noncompliance listed immediately below in this paragraph:

Failure to comply with Sections VII (Additional Response

Actions), X (Access and Institutional Controls), XIV (Assurance of Ability to Complete Work), XV (Trust Fund), XVI (Certification of Completion), XVII (Emergency Response), XVIII (Reimbursement of Response Costs), Paragraphs 104 and 105 of XXV (Effect of Settlement; Contribution Protection), and Paragraphs 12 and 13 of Section VI (Performance of the Work) of this Consent Decree, or for failure to properly and timely achieve the following major milestones and deliverables required under the following subparts of the SOW:

1. V.A.1. Surface Water and Ground Water Monitoring Plan;
2. V.B. Remedial Design Work Plan and POP Revisions;
3. V.C. 30% Remedial Design Submission;
4. V.D. 60% Remedial Design Submission;
5. V.E. 100% Remedial Design Submission;
6. VI.A. Remedial Action Work Plan and POP Revision;
7. VI.B. Pre-Construction Conference;
8. VI.C. Initiation of all Remedial Action Construction Activities;
9. VI.E.1. Operation and Maintenance Plan;
10. VI.E.2. and VI.E.3. Environmental Monitoring Work Plan and POP Revisions;
11. VI.F. Final Construction Inspection;
12. VI.G. Final Remedial Action Construction Reports;
13. VI.H. Demonstration of Compliance Report;
14. Any other major milestone and deliverable for which EPA provides Performing Settling Defendants with reasonable

advance written notice prior to the due date for submittal of such milestone and deliverable.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,000	1st through 7th day
\$ 2,000	8th through 14th day
\$ 4,000	15th through 28th day
\$ 7,000	29th through 60th day
\$15,000	61st day and beyond

79. The following stipulated penalties shall be payable per violation per day to the United States and the Commonwealth, collectively, for any noncompliance except those identified in 78:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1000	15th day through 30th day
\$ 1500	31st day and beyond

80. In the event that EPA or the Commonwealth assumes performance of a portion or all of the Work pursuant to Paragraphs 98, 99 of Section XXIII (Covenants Not to Sue by Plaintiffs), Performing Settling Defendants shall be liable for a stipulated penalty in the amount of Two Hundred Thousand (\$200,000) Dollars.

81. Except as otherwise provided in Paragraphs 73.b, 74.a, 76 and 82 of this Consent Decree, all penalties shall begin to accrue on the day after the complete performance is due or the

day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

82. Following EPA's determination, after a reasonable opportunity for review and comment by the Commonwealth, that Performing Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Performing Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Performing Settling Defendants a written demand for the payment of the penalties. Stipulated penalties for violations described in Paragraph 79 shall not accrue past the 30th day that the event of noncompliance continues, unless EPA provides notice to Performing Settling Defendants of the violation, at which point they will continue to accrue at the level at which they had been tolled. Notwithstanding the foregoing, the stay of stipulated penalties in connection with such violations shall not apply if Performing Settling Defendants fail to timely provide information, data or documentation relevant to the violation if requested by EPA or required to be provided pursuant to the Decree, and such failure to disclose is the reason EPA does not provide notice to Performing Settling Defendants of the violation. However, penalties for violations described in Paragraph 78 shall accrue as provided in the preceding Paragraph regardless of whether EPA,

or the Commonwealth for the obligations specified in Paragraph 39 of this Section, has notified the Performing Settling Defendants of a violation.

83. All penalties owed to the United States and/or the Commonwealth under this section shall be due and payable within 30 days of the Performing Settling Defendants' receipt from EPA or the Commonwealth of a demand for payment of the penalties, unless Performing Settling Defendants invoke the Dispute Resolution procedures under Section XXI (Dispute Resolution). All payments to the United States under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Region 1, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251, and shall reference the EPA Region and Site/Spill ID # 01-38. All payments to the Commonwealth under this Section shall be made payable to the Commonwealth of Massachusetts (to be credited to the Commonwealth's Environmental Challenge Fund, in accordance with M.G.L. c.29, Section 2J). The Performing Settling Defendants shall forward the certified check(s) to:

Kristine McMahon, Assistant Attorney General
Environmental Protection Division
Department of the Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

and shall send copies of the check and transmittal letter to the Commonwealth as specified in Section XXIX (Notices and Submissions). Copies of check(s) paid to EPA pursuant to this Section, and any accompanying transmittal letter(s), shall be

sent to the United States as provided in Section XXIX (Notices and Submissions).

84. The payment of penalties shall not alter in any way Performing Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

85. Penalties shall continue to accrue as provided in Paragraph 81 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA or the Commonwealth that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA and the Commonwealth within 15 days of the agreement or the receipt of EPA's decision or order, or the Commonwealth's decision or order pursuant to Paragraph 89;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, or the Commonwealth, pursuant to Paragraph 89 of this Section, prevails in whole or in part, Performing Settling Defendants shall pay all accrued penalties allocable to the issues on which the United States or the Commonwealth has prevailed, as determined by the Court within 60 days of receipt of the Court's decision or order, except as provided in subparagraph c below;

c. If the District Court's decision is appealed by any Party, then, within 15 days of receipt of the final appellate court decision, the Performing Settling Defendants shall pay the accrued penalties, plus interest accruing from the date of the

District Court decision at the rates specified in Paragraph 86, to EPA and the Commonwealth to the extent that they prevail.

86. If Performing Settling Defendants fail to pay stipulated penalties when due, the United States or the Commonwealth may institute proceedings to collect the penalties owed it/them, as well as interest. Performing Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607, and on that portion of the unpaid balance due and owing to the Commonwealth, at the statutory rate of twelve per cent (12%) per annum, pursuant to Chapter 21E, Section 13; with respect to the EPA, said interest shall begin to accrue on the date of demand made pursuant to Paragraph 82; with respect to the Commonwealth, said interest shall begin to accrue on the 46th day following the Commonwealth's request for payment made pursuant to Paragraph 82.

87. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the Commonwealth to seek any other remedies or sanctions available by virtue of Performing Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, and as to the State, Chapter 21E, Section 11.

88. No payments made under this Section shall be tax deductible for Federal or State tax purposes.

89. Commonwealth Assessment of Stipulated Penalties

Assessment of stipulated penalties by the Commonwealth shall be governed in the following manner. Following the Commonwealth's determination that Settling Defendants have failed to pay Past Response Costs or Future Response Costs owed to the State as required by Section XVIII (Reimbursement of Response Costs), to timely submit deliverables to the State, or to provide such written or oral notices to the State as are required by this Consent Decree, the State may give Settling Defendants written notification of the same and describe the noncompliance. The provisions for liability, assessment and payment of the stipulated penalties referenced in this Paragraph shall be the same as provided in Paragraphs 77-88 of this Section, except that each reference to EPA shall read as a reference to DEP, each reference to the United States shall be read as a reference to the Commonwealth, and each reference to the Commonwealth's reasonable opportunity to review and comment shall be deleted.

XXIII. COVENANTS NOT TO SUE BY PLAINTIFFS

90. Covenants to Performing Settling Defendants, New Jersey and Settling Federal Agencies: In consideration of the actions that will be performed and the payments that will be made by the Performing Settling Defendants, New Jersey and Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 91, 92, 93, 94, 95 and 97 of this Section: (a) the United States covenants not to sue or to take other civil or administrative action against Performing Settling Defendants or New Jersey pursuant to Sections 106 or

107(a) of CERCLA, or Section 7003 of RCRA, including causes of action seeking Past Response Costs or Future Response Costs relating to the Site; (b) EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 or 107(a) of CERCLA, or Section 7003 of RCRA, including causes of action seeking Past Response Costs or Future Response Costs relating to the Site; (c) without limiting the foregoing, the covenants granted by the United States and EPA in this Paragraph specifically include any claims under Section 107(a)(4)(C) of CERCLA for damages for injury to, destruction of, or loss of natural resources relating to the Site, including all costs of assessing such injury, destruction or loss; and (d) the Commonwealth, on behalf of EOE and DEP, covenants not to sue or to take other civil or administrative action against Performing Settling Defendants, New Jersey or Settling Federal Agencies for claims that arise specifically out of the facts pleaded in the complaint, pursuant to: (i) Section 107(a) of CERCLA, (ii) the common law, or (iii) Chapter 21E, including claims for all damages for injury to or for destruction or loss of natural resources at the Site, including the costs of assessing and evaluating the same, provided, however, that the Commonwealth's said covenant for natural resources shall include ground water resource claims only if the following conditions are met:

- (1) within one hundred (100) days of the entry of this Consent Decree, the Performing Settling Defendants shall conduct a survey of private wells within one-half mile of every boundary

of the property known as and numbered 10 Water Street, Palmer, Hampden County, Massachusetts, which is more particularly described in Book 4344, at Page 333 of the Hampden County Registry of Deeds. Information obtained in this survey shall include the location of wells by address and on a map; water use (drinking, commercial/industrial, agricultural); presently available data concerning yield of nonresidential wells; population served; and status (presently in use, no longer used, property abandoned);

(2) the Trustee of natural resources for the Commonwealth ("state natural resource trustee"), based on the survey of private wells, will identify a maximum of five wells, if any, that are threatened by contamination. The Performing Settling Defendants shall be responsible to conduct annual sampling of the identified wells until completion of the Remedial Action. This sampling data shall be submitted to the State Project Manager for the Site, with a copy to the state natural resource trustee.

Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA and the Commonwealth of the payments required by Paragraph 57.a of Section XVIII (Reimbursement of Response Costs), Paragraph 57.b of Section XVIII (Payments by Settling Federal Agencies), and Paragraph 57.c of Section XVIII (Payments by New Jersey). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action

by EPA pursuant to Paragraph 53.b of Section XVI (Certification of Completion). These covenants not to sue are conditioned, respectively, upon the complete and satisfactory performance by Performing Settling Defendants, New Jersey and Settling Federal Agencies of their obligations under this Consent Decree. These covenants not to sue extend only to: (a) the Settling Federal Agencies; (b) New Jersey; (c) the Performing Settling Defendants; (d) the Performing Settling Defendants' successors and assigns to the extent that the liability of the successor or assign, if any, arises out of the liability of any Performing Settling Defendant at the Site; and (e) to a Performing Settling Defendant's related entity only if identified in Appendix K and only to the extent that the identified related entity's alleged liability arises out of the same activities relating to the Site that gave rise to the alleged liability of such Performing Settling Defendant. These covenants not to sue do not extend to any other person.

91. Except with respect to New Jersey and Owner Settling Defendant, the covenants not to sue granted pursuant to Paragraph 90 do not extend to and this Consent Decree is without prejudice to, the United States or the Commonwealth's right to take or compel any future remedial actions for Management of Migration in the event that during or after the environmental monitoring program to be conducted pursuant to the ROD, EPA determines that unacceptable risks to human health and/or the environment are posed by exposure to Site contaminants. Upon Performing Settling Defendants' receipt of notice from EPA pursuant to Paragraph

54.b, the reservation of rights expressed in this Paragraph shall be deemed to have no further force or effect.

92. United States' Pre-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Performing Settling Defendants or New Jersey, and EPA reserves the right to issue an administrative order seeking to compel Settling Federal Agencies, (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to certification of completion of the Remedial Action:

- a. conditions at the Site, previously unknown to EPA, are discovered, or
- b. information, previously unknown to EPA, is received, in whole or in part,

and EPA determines, based on these previously unknown conditions or information together with any other relevant information, that the Remedial Action is not protective of human health or the environment.

93. United States' Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking

to compel Performing Settling Defendants or New Jersey, and EPA reserves the right to issue an administrative order seeking to compel Settling Federal Agencies, (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to certification of completion of the Remedial Action:

- a. conditions at the Site, previously unknown to EPA, are discovered after the certification of completion, or
- b. information is received, in whole or in part, after the certification of completion,

and EPA determines, based on these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

94. Commonwealth's pre-certification reservations.

Notwithstanding any other provisions of this Consent Decree, the Commonwealth on behalf of DEP, reserves, and this Consent Decree is without prejudice to, any right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, under M.G.L. c. 21E or under the common law of nuisance, seeking to compel all or any of the Performing Settling Defendants, New Jersey and/or Settling Federal Agencies (1) to perform other response actions at the Site, or (2) to reimburse the Commonwealth for additional response costs for response

actions at the Site, to the extent that EPA has determined that such response actions required under (1) and (2) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, prior to Certification of Completion of the Remedial Action:

(i) conditions at the Site, previously unknown to the Commonwealth, are discovered or become known to the Commonwealth, or

(ii) information previously unknown to the Commonwealth is received by the Commonwealth, in whole or in part, and the DEP Commissioner, or his or her delegate determines, pursuant to M.G.L. c. 21E, based on these previously unknown conditions or this information together with any other relevant information that the response actions taken are not protective of health, safety, public welfare or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the Commonwealth pursuant to this Paragraph.

95. Commonwealth's post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the Commonwealth, on behalf of DEP, reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, under M.G.L. c. 21E or under the common law of nuisance, seeking to compel all or any of the Performing Settling

Defendants, New Jersey and/or Settling Federal Agencies (1) to perform other response actions at the Site, or (2) to reimburse the Commonwealth for additional response costs for response actions at the Site, to the extent that EPA has determined that such response actions required under (1) and (2) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, subsequent to Certification of Completion of Remedial Action:

(i) conditions at the Site, previously unknown to the State, are discovered or become known after the Certification of Completion, or

(ii) information previously unknown to the State is received by the State, in whole or in part, after the Certification of Completion,

and the DEP Commissioner, or his or her delegate, determines, pursuant to M.G.L. c. 21E, based on these previously unknown conditions or this information together with any other relevant information, that the response actions taken are not protective of health, safety, welfare, or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

96. For purposes of Paragraph 92, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision.

For purposes of Paragraph 93, the information previously received by and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree or generated by EPA during performance of the Remedial Action prior to Certification of Completion of the Remedial Action. For purposes of Paragraph 94, the information and the conditions known to the Commonwealth shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 95, the information previously received by and the conditions known to Commonwealth shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received by the Commonwealth pursuant to the requirements of this Consent Decree or generated by the Commonwealth during performance of the Remedial Action prior to Certification of Completion of the Remedial Action.

97. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 90. With respect to all other matters, including but not limited to:

- a. claims based on a failure by Performing Settling Defendants to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

c. criminal liability; and

d. liability of Performing Settling Defendants for violations of federal or state law which occur in the course of the implementation of the Work;

(1) the United States and the Commonwealth reserve, and this Consent Decree is without prejudice to, all rights against Performing Settling Defendants and New Jersey, and (2) EPA, the federal natural resource trustees, the Commonwealth and the state natural resource trustee reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies.

98. Reservations concerning natural resource damages:

Notwithstanding any other provision of this Decree, the United States, on behalf of its natural resource trustees, the Department of the Interior and the National Oceanic and Atmospheric Administration, and the Commonwealth, on behalf of its state natural resource trustee, reserve the right to institute proceedings against the Settling Defendants in this action or in a new action seeking recovery of natural resource damages, based on (1) conditions with respect to the Site, unknown to the United States or the Commonwealth at the date of lodging of this Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss

of natural resources, or (2) information received after the date of lodging of the Decree which, together with other relevant information, indicates that there is injury to, destruction of, or loss of natural resources, of a type that was unknown, or of a magnitude greater than was known to the United States or the Commonwealth at the date of lodging of this Decree. For the purposes of this paragraph, the United States and the Commonwealth shall be deemed to have knowledge of any injury to, destruction of, or loss of natural resources arising from: (1) Site contamination at levels less than Site Cleanup Levels; and (2) areas exhibiting contamination at levels equaling or exceeding Site Cleanup Levels which are remediated in accordance with the requirements of the ROD and SOW.

99. In the event EPA or the Commonwealth determines that Performing Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA or the Commonwealth may perform any and all portions of the Work as EPA determines necessary. Performing Settling Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution) to dispute EPA's or the Commonwealth's determination that the Performing Settling Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Unless the Performing Settling Defendants prevail in dispute resolution concerning EPA's or the Commonwealth's determination

that the Performing Settling Defendants failed to implement a provision of the Work in an adequate or timely manner, costs incurred by the United States or the Commonwealth in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Performing Settling Defendants shall pay pursuant to Section XVIII (Reimbursement of Response Costs).

100. Notwithstanding any other provision of this Consent Decree, the United States and the Commonwealth retain all authority and reserve all rights to take any and all response actions authorized by law.

XXIV. COVENANTS BY SETTLING DEFENDANTS, NEW JERSEY AND SETTLING FEDERAL AGENCIES

101. a. Except as provided for below in this Paragraph, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the Commonwealth with respect to all matters addressed by this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113, or otherwise any other provision of law, or from the Environmental Challenge Fund established pursuant to M.G.L. c. 29, § 2J; any claim against the United States or the Commonwealth, including any department, agency or instrumentality of the United States or the Commonwealth under CERCLA Sections 107 or 113, or Chapter 21E related to the Site; any claim under

the Tucker Act, 28 U.S.C. § 1491, or at common law, arising out of or relating to access to, institutional controls on, or response activities undertaken pursuant to this Consent Decree; or any claims arising out of response activities pursuant to this Consent Decree, including any claims asserted against the United States' or the Commonwealth's contractors. However, the Settling Defendants and New Jersey reserve, and this Consent Decree is without prejudice to, actions against the United States based on any future negligent actions taken directly by the United States (not including oversight or approval of the Performing Settling Defendants' plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Also, each of the Performing Settling Defendants hereby certifies that, as of the date of lodging of this Consent Decree, it has no information indicating any potential liability of any department, agency or instrumentality of the United States or the Commonwealth which is not a settling party to this Consent Decree; however, the Performing Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against departments, agencies or instrumentalities of the United States or the Commonwealth that are not a Party to this Consent Decree under CERCLA Sections 107 or 113, or Chapter 21E, where information developed wholly after the lodging of this Consent Decree first indicates the potential liability of such a department, agency or instrumentality. Further, Performing Settling Defendants specifically reserve, and

this Consent Decree is without prejudice to, direct or indirect claims for reimbursement from the Hazardous Substance Superfund through CERCLA Sections 106(b)(2)(D), 111, 112, 113, or under any other provision of law, except as provided below, or from the Environmental Challenge Fund, with respect to response actions which the Performing Settling Defendants cannot be compelled to perform under this Consent Decree; provided that a Performing Settling Defendant shall not challenge its liability for response costs pursuant to § 106(b)(2)(C) in any claim for reimbursement. 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).

b. Settling Federal Agencies hereby covenant and agree not to assert any claims or causes of action against Settling Defendants, New Jersey or the Commonwealth with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, the Environmental Challenge Fund established pursuant to M.G.L. c. 29, § 2J, or any other provision of law. 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).

c. New Jersey covenants not to sue and agrees not to assert any claims or causes of action against Settling

Defendants, the United States or the Commonwealth with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 111, 112, or any other provision of law, or from the Environmental Challenge Fund established pursuant to M.G.L. c. 29, § 2J; or any claim against the United States or the Commonwealth, including any department, agency or instrumentality of the United States or the Commonwealth under CERCLA Sections 107 or 113, or Chapter 21E related to the Site. 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).

d. Except for purposes of enforcement of this Consent Decree, the Performing Settling Defendants, the Owner Settling Defendant, New Jersey, and the De Minimis Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against one another with respect to the matters addressed by this Consent Decree.

XXV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

102. Nothing in this 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 decree may have under applicable law. Each of the Parties expressly reserves any and all rights

(including, but not limited to, any right to contribution), 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 Site against any person not a Party hereto.

103. With regard to claims for contribution against Settling Defendants, Covered Related Entities, New Jersey or Settling Federal Agencies, for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants, Covered Related Entities, New Jersey and Settling Federal Agencies are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and that De Minimis Settling Defendants are entitled to such protections from contribution actions or claims as is provided by CERCLA Section 122(g)(5), 42 U.S.C. § 9622(g)(5). Also, with regard to claims for contribution, cost recovery or equitable share of liability against Settling Defendants, Covered Related Entities, New Jersey or Settling Federal Agencies for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants, New Jersey and Settling Federal Agencies are entitled to such protection from such claims as is provided by Section 3A(j)(2) of Chapter 21E, subject to the provisions thereof. Notwithstanding the foregoing, this Paragraph shall be inapplicable to any Performing Settling Defendant and any Covered Related Entities of any Performing Settling Defendant which fails to satisfy its

obligations to fund performance of the Work in accordance with this Consent Decree. As used in this Paragraph 103, the term "Covered Related Entities" shall be deemed to refer to: (a) the Performing Settling Defendants' and De Minimis Settling Defendants' successors and assigns to the extent that the alleged liability of the successor or assign, if any, arises out of the alleged liability of any Performing Settling Defendant or De Minimis Settling Defendant at the Site; and (b) a Performing Settling Defendant's or De Minimis Settling Defendant's related entity only if identified in Appendix K and only to the extent that the identified related entity's alleged liability arises out of the same activities relating to the Site that gave rise to the alleged liability of such Performing Settling Defendant or De Minimis Settling Defendant. The De Minimis Settling Defendants and New Jersey, and each of them, hereby assign to the Performing Settling Defendants collectively all rights to contribution, cost recovery or similar claims, whether under Section 113(f) of CERCLA, Section 4 of Chapter 21E or at common law, from persons not a Party to this Consent Decree, with respect to the amounts the De Minimis Settling Defendants and New Jersey will contribute to the Trust Fund pursuant to this Consent Decree.

104. The Settling Defendants and New Jersey agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States and the Commonwealth in writing no later than 60 days prior to the initiation of such suit or claim.

105. The Settling Defendants and New Jersey also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the Commonwealth within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the Commonwealth within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

106. In any subsequent administrative or judicial proceeding initiated by the United States or the Commonwealth for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants, New Jersey and Settling Federal Agencies shall not assert, and may not 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 by the United States or the Commonwealth in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIII (Covenants Not to Sue by Plaintiffs).

XXVI. PROVISIONS FOR DE MINIMIS SETTling DEFENDANTS

107. On or before September 7, 1994, each of the De Minimis Settling Defendants listed in Appendices F-1 and F-2 and any other parties offered the opportunity by the United States and

the Commonwealth to join in this Consent Decree as De Minimis Settling Defendants will remit to an escrow agent designated by the De Minimis Settling Defendants the amount set forth in Appendices F-1 and F-2 for each De Minimis Settling Defendant or the amount required by the offer to settle. Within thirty days of the last to occur of EPA's approval of the Trust Agreement, the approval of the adequacy of the Trust Agreement after resolution of any dispute regarding the adequacy of the Trust Agreement, or the entry of this Consent Decree, the Performing Settling Defendants shall instruct the escrow agent to, and the escrow agent shall, transfer the funds held in escrow to the Trust Fund upon its creation. Thirty (30) days after September 7, 1994, the Performing Settling Defendants shall compare the amount of money contained in the escrow fund to the amount of money which the De Minimis Settling Defendants listed in Appendices F-1 and F-2 are, in total (the "F1 and F2 Total"), obligated to pay to the escrow agent pursuant to this Paragraph. To the extent that the amount contained in the escrow fund thirty (30) days after September 7, 1994 exceeds the F1 and F2 Total, the Performing Settling Defendants shall prepare revisions to Appendices F-1 and F-2 (the "Adjusted Appendices") and direct the escrow agent to reimburse individual De Minimis Settling Defendants as follows. In the event one or more De minimis Settling Defendant(s) not previously listed in Appendices F-1 and F-2 remit funds to the escrow agent, the Performing Settling Defendants shall add to Appendices F-1 and F-2 those De Minimis

Settling Defendants not previously listed in Appendices F-1 and F-2. The Adjusted Appendices shall incorporate the total volume of hazardous substances attributed to the Performing Settling Defendants and the De Minimis Settling Defendants (the "Revised Total Attributed Volume"), and the Performing Settling Defendants shall then recalculate the final amount due from each De Minimis Settling Defendant based upon the Revised Total Attributed Volume, all other factors in Appendices F-1 and F-2 remaining unchanged. The Performing Settling Defendants shall submit the Adjusted Appendices F-1 and F-2 to EPA and DEP within forty-five (45) days after September 7, 1994, and, consistent with the PSC Resources Superfund Site De Minimis Parties Escrow Agreement, shall direct the escrow agent to pay each De Minimis Settling Defendant an amount equal to the difference between the amount actually paid to the escrow agent by each De Minimis Settling Defendant and the payment amount shown for each De Minimis Settling Defendant on the Adjusted Appendices F-1 or F-2.

108. In addition to their obligations pursuant to Paragraph 107, Tier I De Minimis Settling Defendants shall make payments to, or receive reimbursements from, the Trust Fund, if and to the extent required by the provisions of Appendix G hereto. Any Tier I De Minimis Settling Defendant receiving an invoice for additional payment pursuant to Appendix G shall make the payment required by such invoice to the Trust within thirty (30) days of receipt of such invoice. Any Tier I De Minimis Settling Defendant who fails to make timely payment in accordance with

this Paragraph and Appendix G shall pay stipulated penalties to the United States and the Commonwealth, collectively, of \$250 per day for each day that the payment is late. The United States shall receive 60% of these stipulated penalties and the Commonwealth shall receive 40% of these stipulated penalties. Any Tier I De Minimis Settling Defendant who receives a notice from EPA imposing stipulated penalties pursuant to this Paragraph and who fails to make full payment pursuant to this Paragraph and Appendix G and to pay all applicable stipulated penalties within thirty (30) days of receipt of the notice from EPA imposing such penalties shall be subject to the conditioning of the covenants not to sue as provided in Paragraph 111.

109. On or before September 7, 1994, each De Minimis Settling Defendant listed in Appendix H shall remit to an escrow agent designated by the De Minimis Settling Defendants the amount set forth in Appendix H designated as the "First Payment." Within thirty days of the last to occur of EPA's approval of the Trust Agreement, the approval of the Trust Agreement after resolution of any dispute regarding the adequacy of the Trust Agreement, or the entry of this Consent Decree, the Performing Settling Defendants shall instruct the escrow agent to, and the escrow agent shall, transfer the funds held in escrow to the Trust Fund upon its creation. Successive payments by each De Minimis Settling Defendant listed in Appendix H shall be remitted to the Trust Fund on the anniversary of the effective date of this Consent Decree in accordance with the provisions and

schedule set forth at Appendix H. In the event the Trust Fund has not been established by the time the successive payments are due, the De Minimis Settling Defendant shall make its payment to the escrow agent designated by the De Minimis Settling Defendants in Paragraph 107 of this Consent Decree. Any De Minimis Settling Defendant listed in Appendix H who fails to make timely payment in accordance with this Paragraph and Appendix H shall pay stipulated penalties to the United States and the Commonwealth, collectively, of \$250 per day for each day the payment is late. The United States shall receive 60% of these stipulated penalties and the Commonwealth shall receive 40% of these stipulated penalties. Any De Minimis Settling Defendant listed on Appendix H who receives a notice from EPA imposing stipulated penalties pursuant to this Paragraph and who fails to make full payment pursuant to this Paragraph and Appendix H and to pay all applicable stipulated penalties within thirty (30) days of receipt of the notice from EPA imposing such penalties shall be subject to the conditioning of the covenants not to sue as provided in Paragraph 111.

110. Upon receipt of information provided by a De Minimis Settling Defendant pursuant to Paragraph 114, or upon discovery of other new information, EPA may evaluate such information and determine whether it establishes that any such De Minimis Settling Defendant sent more Waste Materials to the Site than is shown on Appendix F-1 or F-2. If, after such evaluation, EPA determines that the De Minimis Settling Defendant sent a volume

of Waste Materials to the Site greater than ten percent more than is shown for that De Minimis Settling Defendant in Appendix F-1 or F-2 but still not exceeding 5300 gallons, it may send to such De Minimis Settling Defendant a written demand for an amount equal to the difference between what the De Minimis Settling Defendant paid pursuant to Paragraphs 107, 108, and/or 109, and what the De Minimis Settling Defendant would have paid pursuant to those Paragraphs based on such new information. The amount of any additional payment shall be calculated as follows:

$$\text{Additional Payment} = [(G_o/G_1 \times C_{F1}) + (G_o/G_1 \times C_{Fu} \times P_r)] - P_1$$

where: G_o = De Minimis Party's Corrected Allocated Gallons.

G_1 = Corrected Revised Total Attributed Volume among all settling defendants.

C_{F1} = Fixed Costs as shown on F-1.

C_{Fu} = Future Costs as shown on F-1.

P_r = the premium for the applicable range of gallons as shown on F-1.

P_1 = Initial De Minimis Party's Share of Total Site Costs as shown on F-1 or F-2.

If, based upon EPA's evaluation of the information provided by a Tier II De Minimis Settling Defendant pursuant to Paragraph 114, EPA determines that such party sent more than 1,100 gallons, but not more than 5300 gallons of Waste Materials to the Site, such determination shall not alter the Tier II De Minimis Settling Defendant's status as a Tier II De Minimis Settling Defendant and any demand sent by EPA to such Tier II De Minimis Settling

Defendant under the provisions of this Paragraph shall utilize the premium applicable to Tier II De Minimis Settling Defendants. If, based upon EPA's evaluation of the information provided by a De Minimis Settling Defendant or otherwise discovered by EPA, EPA determines that such party sent more than 5300 gallons of Waste Materials to the Site, such party shall no longer be eligible for consideration as a De Minimis Settling Defendant under this Consent Decree. In no event shall a Tier II De Minimis Settling Defendant become a Tier I De Minimis Settling Defendant as a result of EPA's determination that information demonstrates that such party sent more than 1,100 gallons of Waste Materials to the Site. The De Minimis Settling Defendant shall not be subject to stipulated penalties pursuant to this Consent Decree for failure to make any further payment pursuant to such invoice, but any De Minimis Settling Defendant who fails to make any further payment pursuant to such invoice shall be subject to the conditioning of the covenants not to sue as provided in Paragraph 111. Payments made pursuant to this provision shall be made within 30 days of receipt of EPA's demand, and shall be made to the United States and the Commonwealth pursuant to the provisions of Section XVIII of this Consent Decree, and in the following percentages: 89% to United States and 11% to the Commonwealth.

111. Covenants to De Minimis Settling Defendants. In consideration of the payments that will be made by each De Minimis Settling Defendant as required under Paragraphs 107, 108 and 109, and except as provided in Paragraph 112, the United

States covenants not to sue or take any other civil or administrative action against such De Minimis Settling Defendant pursuant to Section 106 and 107(a) of CERCLA, or Section 7003 of RCRA; and the Commonwealth, on behalf of ECEA and DEP, covenants not to sue or take other civil or administrative action against such De Minimis Settling Defendant for claims that arise specifically out of the facts pleaded in the complaint, pursuant to (i) Section 107(a) of CERCLA, (ii) the common law, and (iii) Chapter 21E, including claims for all damages for injury to or for destruction or loss of natural resources at the Site. These covenants not to sue extend only to the applicable De Minimis Settling Defendants, and their successors, and assigns to the extent that the liability of the successor or assign, if any, arises out of the liability of any De Minimis Settling Defendant at the Site, and do not extend to any other person. These covenants not to sue shall also extend to a De Minimis Settling Defendant's related entity identified in Appendix K to the extent that the identified related entity's alleged liability arises out of the same activities relating to the Site that give rise to the alleged liability of such De Minimis Settling Defendant. Except as provided elsewhere in this Paragraph, these covenants shall take effect upon the payment of all amounts to the Trust Fund required under Paragraph 107 of this Consent Decree. With respect to those Tier I De Minimis Settling Defendants having obligations to make further payments pursuant to Paragraph 108, those Tier I and/or Tier II De Minimis Settling Defendants making

further payments pursuant to Paragraph 109, and/or those Tier I and/or Tier II De Minimis Settling Defendants having obligations to make further payments pursuant to Paragraph 110, the continued effectiveness of the covenant provided in this Paragraph and the contribution protection provided in Paragraph 103 shall be conditioned upon the full and complete satisfaction of the applicable obligations contained in Paragraphs 108, 109 and 110, and Appendices G and H.

112. General Reservation of Rights as to De Minimis Settling Defendants. The covenant not to sue set forth in Paragraph 111 of this Section does not pertain to any matters other than those expressly specified in Paragraph 111. Plaintiffs reserve, and this Consent Decree is without prejudice to, all rights against each De Minimis Settling Defendant with respect to all other matters, including but not limited to, the following:

(1) liability arising from the past, present, or future disposal, release, or threat of release of any Waste Material outside of the Site;

(2) criminal liability;

(3) claims against De Minimis Settling Defendants based on a failure to make payments in accordance with this Consent Decree;

(4) liability for violation of any law; and

(5) liability for the future disposal by any De Minimis Settling Defendant of any Waste Materials at the Site.

113. Without admitting that any of its wastes were shipped to

the Site or that any wastes shipped to the Site constitute Waste Materials within the meaning of this Consent Decree or applicable law, each De Minimis Settling Defendant hereby certifies, to the best of its knowledge and belief, the following:

i. The De Minimis Settling Defendant has provided to EPA and the Commonwealth all requested information in its possession, or in the possession of its officers, directors, employees, agents or assigns, that relates in any way to the generation, treatment, transportation, storage or disposal of any Waste Material(s) to, at, or in connection with the Site;

ii. The information described in subparagraph (i) that was generated or created by, or prepared at the direction of, the De Minimis Settling Defendant, or its officers, directors, employees, agents or assigns is materially true and correct with respect to the amount of Waste Material(s) that the De Minimis Settling Defendant may have contributed to the Site, with respect to the chemical nature and constituents of such Waste Material(s), and with respect to the toxic or other hazardous effects of such Waste Material(s); and

iii. After reasonable inquiry, the De Minimis Settling Defendant neither possesses nor knows of other documents or information not previously provided to EPA and the Commonwealth which would indicate:

A. that the De Minimis Settling Defendant has contributed to the Site, or otherwise arranged for disposal at the Site, a higher volume of Waste Materials than is indicated

by the information described in subparagraph (i) and/or the Monthly Operation Reports for the Site;

B. that the De Minimis Settling Defendant has contributed to the Site, or otherwise arranged for disposal at the Site, Waste Material(s) possessing different chemical natures or constituents or possessing more toxic or other hazardous effects than are indicated by the information described in subparagraph (i) and/or the Monthly Operation Reports for the Site; or

C. that the statement set forth in Paragraph N of Section I is untrue.

114. Should any De Minimis Settling Defendant discover or come to possess after the date of their signature to the Consent Decree, documentary information, not previously provided to EPA or the Commonwealth, that shows the volume of Waste Material it contributed to the Site is greater than ten percent more than the amount to which it certified, the Settling Defendant shall promptly notify EPA, the Commonwealth and the Performing Settling Defendants of the new information.

115. If any De Minimis Settling Defendant has made any material misrepresentations in the certifications made pursuant to Paragraph 113 of this Consent Decree, then the covenant not to sue provided pursuant to Paragraph 111 and the contribution protection provided pursuant to Paragraph 103, shall be null and void and nothing in this Consent Decree shall limit the United States', the Commonwealth's or the Performing Settling

Defendants' ability to seek or obtain further relief from any such De Minimis Settling Defendant.

116. If, after entry of the Consent Decree, EPA or DEP determines, based upon information provided by a De Minimis Settling Defendant or based upon other new information obtained by EPA or DEP, that a De Minimis Settling Defendant contributed Waste Materials to the Site in excess of 5300 gallons or which contributed disproportionately to the cumulative toxic or other hazardous effects of the Waste Materials at the Site, then the covenant not to sue provided pursuant to Paragraph 111 and the contribution protection provided pursuant to Paragraph 103, shall be null and void as to that De Minimis Settling Defendant and nothing in this Consent Decree shall limit the United States', the Commonwealth's, or the Performing Settling Defendants' ability to seek or obtain further relief from any such De Minimis Settling Defendant. Notwithstanding the foregoing provisions of this Paragraph or Paragraph 110 above, any such De Minimis Settling Defendant shall be fully credited for all amounts paid by said De Minimis Settling Defendant pursuant to this Consent Decree in any claim or action brought against said De Minimis Settling Defendant.

XXVII. ACCESS TO INFORMATION

117. Performing Settling Defendants shall provide to EPA and the Commonwealth, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to

the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Performing Settling Defendants shall also make available to EPA and the State, upon request for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

118. a. Performing Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b), with respect to EPA, and M.G.L. c. 21E, Section 12, and 310 CMR § 40.0011 with respect to the Commonwealth. Documents or information determined to be confidential by EPA or the Commonwealth will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B or 310 CMR § 40.0011, as the case may be. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the Commonwealth, or if EPA or the Commonwealth has notified Performing Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, or Section 12 of Chapter 21, as the case may be, the public may be given access to such documents or information without further notice to

Performing Settling Defendants.

b. The Performing Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Performing Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the non-privileged contents of the document, record, or information; and (6) the privilege asserted by Performing Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

119. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVIII. RETENTION OF RECORDS

120. a. Until 10 years after the Performing Settling Defendants' receipt of EPA's notification pursuant to Paragraph 53.b of Section XVI (Certification of Completion of Remedial Action), each Performing Settling Defendant and Settling Federal

Agency, and New Jersey shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Performing Settling Defendants' receipt of EPA's notification pursuant to Paragraph 54.b of Section XVI (Certification of Completion of the Work), Performing Settling Defendants, New Jersey and Settling Federal Agencies shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

b. Until 6 years after the De Minimis Settling Defendants' receipt of EPA's notification pursuant to Paragraph 53.b of Section XVI (Certification of Completion of Remedial Action), each De Minimis Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary.

121. At the conclusion of the document retention periods set forth in this Section, Settling Defendants, New Jersey and Settling Federal Agencies shall notify the United States and the Commonwealth at least 90 days prior to the destruction of any

such records or documents, and, upon request by the United States or the Commonwealth, Settling Defendants New Jersey or Settling Federal Agencies shall deliver any such records or documents to EPA or the Commonwealth. The Settling Defendants, New Jersey or Settling Federal Agencies may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants, New Jersey or Settling Federal Agencies assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants, New Jersey or Settling Federal Agencies. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

122. Each Settling Defendant and Settling Federal Agency, and New Jersey hereby certifies, individually, that it has, to the best of its knowledge after reasonable inquiry, not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the Commonwealth or the filing

of suit against it regarding the Site and that it has fully complied with any and all EPA or DEP requests for information pursuant to Sections 104(e) and 122(e) of CERCLA and Section 3007 of RCRA, and Chapter 21E, respectively.

XXIX. NOTICES AND SUBMISSIONS

123. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Commonwealth, and the Performing Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-982

and

Director, Waste Management Division
United States Environmental Protection Agency
Region I
JFK Federal Building

Boston, MA 02203-2211

As to EPA:

Kristine Laumeyer
EPA Remedial Project Manager
PSC Resources Site, Palmer, MA
United States Environmental Protection Agency
Region I
JFK Federal Building
Boston, MA 02203-2211

As to the Commonwealth:

Chief, Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108-1698

and

Remedial Project Manager
Re: PSC Resources Superfund Site
Bureau of Waste Site Cleanup
Department of Environmental Protection
One Winter Street, 5th Floor
Boston, MA 02108

As to DEP:

Remedial Project Manager
Re: PSC Resources Superfund Site
Bureau of Waste Site Cleanup
Department of Environmental Protection
One Winter Street, 5th Floor
Boston, MA 02108

As to the Performing Settling Defendants:

[Name]
Performing Settling Defendants' Project Coordinator
[Address]

As to New Jersey:

Mark Turner Holmes
Deputy Attorney General
Hughes Justice Complex, CN 116
Trenton, New Jersey 08625

XXX. EFFECTIVE DATE

124. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXXI. RETENTION OF JURISDICTION

125. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants, New Jersey and Settling Federal Agencies for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXI (Dispute Resolution) hereof.

XXXII. APPENDICES

126. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the complete list of the Performing Settling Defendants.

"Appendix E" is the complete list of the Settling Federal Agencies.

"Appendices F-1 and F-2" are the complete lists of the De

Minimis Settling Defendants, consisting of Tier I Defendants (Appendix F-1) and Tier II Defendants (Appendix F-2).

"Appendix G" sets forth the terms and conditions under which Tier I Defendants shall make or receive payments in accordance with Paragraph 108.

"Appendix H" is the complete list of those De Minimis Settling Defendants have agreed to make payments under this Consent Decree in accordance with Paragraph 109.

"Appendix I" is the Requisition form that the Performing Settling Defendants are to submit to the Settling Federal Agencies for payments in accordance with Paragraph 57.f.

"Appendix J" is the Access and Institutional Controls Agreement.

"Appendix K" is the complete list of those related entities of Settling Defendants potentially responsible for waste materials disposed of at the Site and to which the provisions of Paragraph 103, and either Paragraphs 90 or 111 apply.

XXXIII. COMMUNITY RELATIONS

127. Performing Settling Defendants shall propose to EPA and the Commonwealth their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Performing Settling Defendants under the Plan. Performing Settling Defendants shall also cooperate with EPA and the Commonwealth in providing information regarding the Work to the public. As requested by EPA or the Commonwealth, Performing Settling Defendants shall participate in the preparation of such

information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the Commonwealth to explain activities at or relating to the Site.

XXXIV. MODIFICATION

128. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Performing Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the schedules specified in the Consent Decree for completion of the Work, or modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the Commonwealth with a reasonable opportunity to review and comment on the proposed modification, and the Performing Settling Defendants. Such non-material modifications will become effective upon filing with the Court by the United States.

129. Material modifications to the Consent Decree may be made by written notification to and written approval of the United States, the Commonwealth, the Performing Settling Defendants, New Jersey, the Settling Federal Agencies, and the Court, unless such modifications affect provisions of this Consent Decree concerning obligations of De Minimis Settling Defendants, in which event such parties' written approval shall also be required. Non-material modifications to the Consent Decree not addressed by

Paragraph 128 may be made by written notification to and written approval of the United States, the Commonwealth, New Jersey and the Settling Defendants. Such modifications will become effective upon filing with the Court by the United States.

130. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

131. This Consent Decree shall be subject to a minimum thirty (30) day public comment period in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if comments received disclose facts or considerations which show that the Consent Decree is inappropriate, improper or inadequate within the meaning of Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2) or 28 C.F.R. § 50.7. The Commonwealth may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates state law. The United States reserves the right to challenge in court the Commonwealth's withdrawal from the Consent Decree, including the right to argue that the requirements of state law have been waived, pre-empted or otherwise rendered inapplicable by federal law. The Commonwealth reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In addition, in the event

of the United States' withdrawal from this Consent Decree, the Commonwealth reserves its right to withdraw from this Consent Decree. In the event both the United States and the Commonwealth remain parties to this Consent Decree, Settling Defendants consent to the entry of this Consent Decree without further notice; in the event either the United States or the Commonwealth withdraws or withholds its consent under this Paragraph, however, the Settling Defendants reserve the right to withdraw or withhold their consent to the entry of this Consent Decree.

132. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable for each individual party at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXVI. SIGNATORIES/SERVICE

133. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for Environment and Natural Resources of the Department of Justice, and the Assistant Attorney General for the Commonwealth 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.

134. Each Settling Defendant, New Jersey and Settling Federal Agency 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 has notified the Settling

Defendants or New Jersey in writing that it no longer supports entry of the Consent Decree.

135. Each Settling Defendant and New Jersey shall identify, on the attached signature page, the name, address and telephone number 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 Consent Decree. Settling Defendants and New Jersey 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.

XXXVII. ADDITIONAL SETTling PERSONS

136. The Performing Settling Defendants, following their respective signatures on this Consent Decree but prior to the close of the public comment period following lodging of this Consent Decree, intend to seek additional persons to join this settlement as De Minimis Settling Defendants under this Consent Decree. The Parties agree that the Performing Settling Defendants may seek to add additional De Minimis Settling Defendants up to and through the close of the public comment period following lodging of this Consent Decree subject to the terms of this Section XXXVII. The Performing Settling Defendants must submit a written request to the United States and the Commonwealth to add additional De Minimis Settling Defendants to this Decree, identifying the person(s) proposed to be added.

With regard to each person proposed to be added, the request must (a) state the amount of proceeds the additional person has agreed to pay in settlement, and (b) include the evidence and/or the proposed additional De Minimis Party's certification demonstrating such person is a potentially responsible party under CERCLA or Chapter 21E. An executed signature page for each such additional proposed De Minimis Settling Defendant shall also be included with the request. If the United States and the Commonwealth, in their unreviewable discretion not subject to Dispute Resolution under this Decree, assent to a request by the Performing Settling Defendants to add an additional person under this Section, the United States and the Commonwealth will move to amend their Complaints and this Consent Decree accordingly. The provisions set forth above in this Paragraph shall not extend to any person previously notified by EPA or DEP of its potential responsibility regarding the Site.

137. The United States' and the Commonwealth's review of, assent to, or the Court's approval of the addition of a new person under this Section shall not be construed as affecting in any way any terms of this Consent Decree, except by the inclusion of an additional person as a signatory. The United States' and the Commonwealth's review of a request for, assent to, or the Court's approval of, the addition of an additional person under this Section shall not suspend, toll or otherwise affect any obligation of Performing Settling Defendants under this Consent Decree.

138. All proceeds paid by an additional person shall be paid to the Trust Fund and the Trustee shall distribute such proceeds as follows: 36% of the proceeds shall be paid to the United States, 4% of the proceeds shall be paid to the Commonwealth, and 60% of the proceeds shall be paid to the Performing Settling Defendants.

139. After the Performing Settling Defendants' notification to the United States and the Commonwealth of a request to add an additional person and pending the United States' and the Commonwealth's consideration thereof, the Performing Settling Defendants agree not to sue any proposed potential additional person under CERCLA or Chapter 21E that is the subject of the notification to the United States and the Commonwealth. Nothing in this Paragraph shall pose any impediment, however, to the Performing Settling Defendants' assertion of any claims they may have under CERCLA, Chapter 21E or any other legal theory against any person not a Party after entry of this Consent Decree.

140. The provisions of Paragraphs 107 and 108 of this Consent Decree shall not apply to any person added to this Consent Decree as a De Minimis Settling Defendant pursuant to this Section XXXVII.

SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States and the Commonwealth of Massachusetts v. Reece, Inc., et al., relating to the PSC Resources Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

Lois J. Schiffer
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Richard H. Boote
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Donald K. Stern
United States Attorney

Assistant United States Attorney
District of Massachusetts
U.S. Department of Justice

United States and Commonwealth of Massachusetts v. AMF Reece, Inc., et al. Consent Decree Signature Page

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

John P. DeVillars
Regional Administrator
U.S. Environmental Protection
Agency
Region I
JFK Federal Building
Boston, MA 02203-2211

Willis G. Wang
Timothy M. Conway
Marcia J. Lamel
Office of Regional Counsel
U.S. Environmental Protection
Agency
Region I
JFK Federal Building
Boston, MA 02203-2211

United States and Commonwealth of Massachusetts v. AMF Reece,
Inc., et al. Consent Decree Signature Page

FOR THE COMMONWEALTH OF MASSACHUSETTS

Date: _____

Kristine C. McMahon
Assistant Attorney General
Environmental Protection Division
Department of the Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

Date: _____

Thomas B. Powers, Acting Commissioner
Massachusetts Department of
Environmental Protection
One Winter Street
Boston, Massachusetts 02108

Date: _____

Tandy Cox, Secretary
Executive Office of Environmental Affairs
100 Cambridge St.
Boston, Massachusetts 02202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and Commonwealth of Massachusetts v. AMF Reece, Inc., et al., relating to the PSC Resources Superfund Site.

FOR NEW JERSEY

Date: _____

Kenneth C. Afferton
Assistant Commissioner Design and
Right of Way
New Jersey Department of
Transportation
1035 Parkway Avenue
Trenton, New Jersey 08625

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States and Commonwealth of Massachusetts v. AMF Reece, Inc., et al., relating to the PSC Resources Superfund Site.

* / FOR _____, ON BEHALF OF _____
[Signatory to this Consent Decree] [If applicable - Entity which differs from Signatory and is on: Appendices F-1 or F-2; not on F-1 or F-2, but on Previously Non-Participating PRPs List;

Date: _____
[Name -- Please Type]
[Title -- Please Type]
[Address -- Please Type]
[Tel. Number -- Please Type]
[Facsimile Number -- Please Type]

Agent Authorized to Accept Service on Behalf of Above-signed Party (if blank, the above-listed name shall be the Authorized Agent to Accept Service):

Name: _____ [Please Type]
Title: _____
Address: _____
Tel. Number: _____
Facsimile Number: _____

* / A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.