

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA, and the
STATE OF NEW HAMPSHIRE,

Plaintiffs,

v.

COAKLEY LANDFILL, INC.;
RONALD COAKLEY, INDIVIDUALLY;
and RONALD COAKLEY, NEIL COAKLEY,
DEBORAH BORZA, PATRICIA CASE,
A PARTNERSHIP D/B/A ESTATE OF
PATRICK J. COAKLEY LANDFILL,

Defendants.

Civil Action No.

95- 339-M

CONSENT DECREE

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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 of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA") and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973.

B. The United States in its complaint seeks the reimbursement of response costs incurred and to be incurred by the United States for response actions in connection with the release or threatened release of hazardous substances at the Coakley Landfill Superfund Site in North Hampton, New Hampshire ("the Site"), and the implementation of certain remedial actions set forth in the Records of Decision for the first and second operable units for the Site .

C. In accordance with the National Contingency Plan and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Hampshire (the "State") in April, 1993 of negotiations with potentially responsible parties regarding the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State of New Hampshire (the "State") has also filed a complaint against the Defendants in this Court pursuant to

Section 107 of CERCLA, 42 U.S.C. § 9607, and New Hampshire RSA 147-B seeking reimbursement of response costs incurred by the State for response actions in connection with the release or threatened release of hazardous substances at the Site.

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

F. Coakley Landfill, Inc.; Ronald Coakley, individually; and Ronald Coakley, Neil Coakley, Deborah Borza, Patricia Case, a partnership d/b/a Estate of Patrick J. Coakley Landfill ("Settling Defendants") do not admit, and specifically deny, any liability arising out of the transactions or occurrences alleged in the complaints.

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 June 10, 1986, 51 Fed. Reg. 21073.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, a Remedial Investigation/Feasibility Study ("RI/FS") was conducted for the first operable unit at the Site from May 6, 1986, to March 9, 1990.

I. Based on the RI/FS, EPA issued a first operable unit Record of Decision ("ROD") selecting the Remedial Action for source control for the Site on June 28, 1990, on which the State has given its concurrence. The ROD includes EPA's responsiveness summary to the public comments. Notice of the ROD for the first operable unit was published in accordance with Section 117(b) of CERCLA. Subsequent to this ROD, EPA issued an Explanation of Significant Differences (ESD) on March 22, 1991 for the first operable unit.

J. A Remedial Investigation/Feasibility Study ("RI/FS") for the second operable unit for management of migration of contamination was commenced on October 15, 1990.

K. Based on the second RI/FS, EPA issued a second operable unit Record of Decision ("OU2 ROD") selecting the Remedial Action for management of migration for the Site on September 30, 1994, on which the State has given its concurrence. The OU2 ROD includes EPA's responsiveness summary to the public comments. Notice of the OU2 ROD for the second operable unit was published in accordance with Section 117(b) of CERCLA.

L. The purpose of this Consent Decree is to provide for Settling Defendants' payment of a portion of the United States' and the State of New Hampshire's past and future response costs and Natural Resource Damages regarding the Site, and provision of access and Institutional Controls for the Site.

M. 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 and 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.

THEREFORE, with the consent of the parties to this Decree, it is 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. §§ 9607 and 9613(b); and pendent jurisdiction over the claims asserted by the State arising under the laws of New Hampshire. This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, the Settling Defendants waive all objections and defenses they may have to jurisdiction of the Court or to venue in this District and shall not challenge the entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the State, and Settling Defendants and their agents, employees, heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to any transfer of assets or real or personal property, shall in no way

alter the status or responsibilities of the Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.
- b. "Certification of Completion" shall mean EPA's certification pursuant to Section 122(f)(3) of CERCLA, 42 U.S.C. § 9622(f)(3), that remedial action has been completed at the Site in accordance with the requirements of the NCP, the RODs, and any consent decree requiring the performance of remedial action at the Site.
- c. "Coakley Property" shall mean the approximately 92 acre piece of property which consists of the lots denominated as Map 21, Lots 32 and 33, on the tax maps of the Town of North Hampton, NH, and Map R-1, Lots 9A and 9B, on the tax maps of the Town of Greenland, NH.

- d. "Consent Decree" shall mean this Decree and any attached appendices.
- e. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal Holiday, the period shall run until the close of business of the next working day.
- f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- g. "Federal Trustees" means the Secretary of the Department of Commerce, acting through the National Oceanic and Atmospheric Administration (NOAA), and the Secretary of the Department of the Interior (DOI).
- h. "Final Approval of the Decree" shall mean the earliest date on which all of the following have occurred: (1) the Decree has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the Court has approved and entered the Decree as a judgment; and (3) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further

appeal has expired without the filing of a further appeal or no further appeal is allowed.

- i. "Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States and the State will incur for response actions at the Site after the date of lodging of this Decree.
- j. "Institutional Controls" shall mean covenants, conditions, and restrictions and other equivalent requirements and controls developed at the discretion of the United States and/or the State for one or more of the following purposes: 1) to restrict the use of groundwater at the Site; 2) to limit human or animal exposure to Waste Material at the Site; 3) to ensure non-interference with the performance, operation, and maintenance of the Remedial Action and any other response actions at or pertaining to the Site; and 4) to ensure the integrity and effectiveness of the Remedial Action and any other response actions at or pertaining to the Site.
- k. "Interest," for purposes of paragraphs 9 and 10 of this Consent Decree, in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established pursuant

to the Internal Revenue Code, 26 U.S.C. § 9507.

In calculating the Interest for purposes of paragraphs 9 and 10 of this Consent Decree, EPA may compound on a daily, monthly or annual basis.

- l. "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.
- m. "Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).
- n. "Natural Resource Damages" means damages for injury to, destruction of, or loss of natural resources at the Coakley Landfill Site, including the reasonable costs of assessing such injury, destruction, or loss at the Coakley Landfill Site.
- o. "NHDES" means the New Hampshire Department of Environmental Services and any successor departments or agencies of the State.
- p. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.
- q. "Parties" shall mean the United States, the State of New Hampshire, and the Settling Defendants.

- r. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State have incurred for response actions at the Site prior to the date of lodging of this decree.
- s. "Remedial Action" means those actions that EPA determines should be implemented pursuant to CERCLA to address hazardous substance contamination at the Coakley Landfill Site, as set forth in the RODs.
- t. "Record of Decision" or "ROD" or "RODs" means the EPA Record of Decision relating to Operable Unit 1, source control, at the Site signed on June 28, 1990, by the Regional Administrator, EPA Region I, and all attachments thereto, and the Explanation of Significant Differences or "ESD" dated March 22, 1991; and the Record of Decision relating to Operable Unit 2, management of migration of contamination, signed on September 30, 1994, by the Regional Administrator, EPA Region I, and all attachments thereto.
- u. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- v. "Settling Defendants" shall mean Coakley Landfill, Inc.; Ronald Coakley, individually; and Ronald Coakley, Neil Coakley, Deborah Borza, Patricia

Case, a partnership d/b/a Estate of Patrick J. Coakley Landfill.

- w. "Site" shall mean the Coakley Landfill Superfund Site, located in North Hampton, New Hampshire and described in Appendix A to this Consent Decree.
- x. "State" shall mean the State of New Hampshire.
- y. "State Trustee" means the Commissioner of the New Hampshire Department of Environmental Services.
- z. "United States" shall mean the United States of America.
- aa. "Waste Material" shall mean (1) any substance meeting the definition provided in 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 "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5); (4) any "solid waste" as defined by Section 1004(27) of RCRA, 42 U.S.C. 6903(27) and (5) any "hazardous waste" or "hazardous material" under New Hampshire RSA 147-B:2.

V. ESCROW OBLIGATIONS

- 4. a. Within ten (10) business days of their signing of this Decree, Settling Defendants shall establish an escrow account (the Escrow) bearing interest on commercially reasonable terms in a federally chartered bank or a state-chartered bank in

Massachusetts, New Hampshire, or New York with assets of over \$100 million (the Escrow Agent), and Settling Defendants shall cause to be paid into the Escrow the amount of \$842,400. The Escrow Agreement shall be subject to approval by the United States. The Escrow Agreement between Settling Defendants and the Escrow Agent shall provide that the Escrow Agent shall submit to the jurisdiction and venue of the United States District Court for the District of New Hampshire in connection with any litigation arising out of the Escrow agreement. A copy of the Escrow Agreement is attached as Appendix B. Settling Defendants shall notify Plaintiffs in writing of the creation and funding of the Escrow immediately after the payment has been made. This notice shall be sent by hand or by overnight courier service to Elizabeth Yu, Environmental Enforcement Section, U.S. Department of Justice, 1425 New York Avenue, N.W., Washington, DC 20005 and to Anne Renner, Assistant Attorney General, Environmental Protection Bureau, State House Annex, 25 Capitol Street, Concord, NH 03301-6397.

b. Subject only to the provisions of subparagraph c. of this Paragraph, Settling Defendants' obligations to establish the Escrow and to pay the amount specified above into the Escrow within the specified time is a contractual obligation to Plaintiffs effective as of the date that the Settling Defendants have signed the Decree, and that obligation shall be enforceable as a matter of contract law regardless of when or whether the Decree is entered by the Court. The consideration for that

contractual undertaking by Settling Defendants includes Plaintiffs' forbearance of litigation activities until a determination is made whether this Decree will be entered, and the resolution of Plaintiffs' claims against Settling Defendants as set forth in the Decree, if the Decree is approved and entered by the Court.

c. All funds paid into the Escrow by Settling Defendants shall remain in the Escrow and may not be withdrawn by any person, except to make the payments required by Paragraphs 5, 6, 7, and 8 or unless one of the following events occurs: (1) the United States or the State of New Hampshire withdraws its consent to entry of the Decree after the Decree has been lodged, pursuant to Paragraph 35; or (2) a final judicial determination is made that the Decree will not be approved and entered. If either (1) or (2) above occurs, all sums in the Escrow shall be returned to Settling Defendants. Any risk of loss of funds paid into Escrow shall be borne by the Settling Defendants.

d. All interest accrued in the Escrow shall be paid to Plaintiffs in accordance with Paragraphs 5, 6, 7, and 8 at the time the principal payments under those paragraphs are made. Settling Defendants will be responsible for all fees, taxes, costs and charges of the Escrow, and those amounts will not be deducted from the principal or interest owed from the escrow account to Plaintiffs.

VI. PAYMENT TERMS

5. Within ten (10) business days after receipt of notice of Final Approval of the Decree, Settling Defendants shall cause the full amount paid into the Escrow under Paragraph 4 and all accrued interest thereon to be disbursed from the Escrow to Plaintiffs in accordance with Paragraphs 6, 7 and 8. This amount will be allocated: to the United States on behalf of EPA for Past and Future Response Costs in the amount of \$686,927, plus 81.54% of all interest accrued in the Escrow; to the State of New Hampshire for Past and Future Response Costs and Natural Resource Damages in the amount of \$66,212, plus 7.86% of all interest accrued in the Escrow; and to the United States on behalf of DOI for Natural Resource Damages in the amount of \$89,261, plus 10.60% of all interest accrued in the Escrow. The obligations of Settling Defendants to make the payments to Plaintiffs under this Consent Decree are joint and several.

6. Settling Defendants shall pay the sum of \$686,927, plus 81.54% of all interest accrued in the Escrow, from the total referenced in paragraph 5 of \$842,400, plus interest accrued on that amount, to the EPA Hazardous Substances Superfund for Past and Future Response Costs incurred or to be incurred by EPA with respect to the Site. This payment shall be made by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice lockbox bank, referencing CERCLA Number 0164, DOJ Case Number 90-11-2-678A, and the appropriate United States Attorney's Office (U.S.A.O.) file number. Payment

shall be made in accordance with instructions, including U.S.A.O. number, provided by the United States. Any EFTs received at the United States Department of Justice lockbox bank after 11:00 A.M. (Eastern Time) will be credited on the next business day.

Settling Defendants shall send written notice of the EFT to the United States as specified in Section XIV (Notices and Submissions) within 48 hours of said transfer.

7. Settling Defendants shall pay the sum of \$89,261, plus 10.60% of all interest accrued in the Escrow, from the total referenced in paragraph 5 of \$842,400, plus interest accrued on that amount, to DOI for Natural Resource Damages at the Site. This payment shall be made by certified or bank check, made payable to the Secretary of the Interior, and shall reference the NRDAR account number 14X1618 as well as the "Coakley Landfill Site." The check shall be sent to the Chief, Division of Finance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22030. Settling Defendants shall cause copies of this check and of any transmittal letter accompanying the check to be sent to the United States as specified in Section XIV (Notices and Submissions) within 48 hours of payment.

8. The payment of \$66,212, plus 7.86% of all interest accrued in the Escrow, from the total referenced in paragraph 5 of \$842,400, plus interest accrued on that amount, to the State of New Hampshire shall be made by certified or bank check payable to Treasurer, State of New Hampshire. The certified or bank check shall reference the "Coakley Landfill Site." The Settling

Defendants shall send the certified check to Anne E. Renner, Assistant Attorney General, as specified in Section XIV (Notices and Submissions).

VII. FAILURE TO MAKE TIMELY PAYMENT

9. Interest on Late Payment. In the event that the payments required by Sections V and VI are not made when due, Interest in accordance with Paragraph 3(k) shall accrue on the unpaid balance from the date due through the date of payment.

10. Stipulated Penalty. If any amounts due to the United States and the State under this Consent Decree are not paid by the required date, the Settling Defendants shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 9, \$1,000 per day that any such payment is late. Stipulated penalties are due and payable within 30 days of the Settling Defendants' failure to timely make any payment due under this Consent Decree. All payments under this Paragraph shall be paid by certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to EPA Region I, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251, and shall reference CERCLA Number 0164 and DOJ Case Number 90-11-2-678A. Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letter, shall be sent to the United States as provided in Section XIV (Notices and Submissions). Penalties shall accrue as provided above regardless of whether EPA has notified the Settling Defendants of the violation or made a demand for payment.

11. If the United States must bring an action to collect any payment required by this Consent Decree, the Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under Paragraphs 9-11 shall be in addition to any other remedies or sanctions available to the United States or the State by virtue of Settling Defendants' failure to make timely payments required by this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFFS

13. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 15, 16, 18, and 19 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA relating to Past and Future Response Costs and Natural Resource Damages relating to the Site and pursuant to Section 106 of CERCLA and Section 7003 of RCRA for performance of the Remedial Action. Except with respect to future liability, the covenants not to sue in this Paragraph shall take effect upon the receipt by the United States of all payments required by Sections V, VI and VII. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent

Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

14. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 18 and 19 of this Section, the State covenants not to sue or to take administrative action against Settling Defendants pursuant to New Hampshire Revised Statutes Annotated 147-B or Section 107(a) of CERCLA, for Past Response Costs and Natural Resources Damages relating to the Site. The State further covenants not to sue or take administrative action against the Settling Defendants pursuant to New Hampshire Revised Statutes Annotated 147-B or Section 107(a) of CERCLA for Future Response Costs relating to contamination or other matters at the Site that are or could have been addressed in the State's complaint in this case. Except with respect to future liability, these covenants not to sue shall take effect upon the payments required by Sections V and VI. With respect to future liability, the covenants not to sue in this Paragraph shall take effect upon EPA's Certification of Completion of Remedial Action. These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

15. 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 Settling Defendants (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.

16. 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 Settling Defendants (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, unknown to EPA at the time of Certification of Completion, are discovered, or
- b. information, unknown to EPA, is received, in whole or in part,

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

17. For purposes of Paragraph 15, the information and the conditions known to EPA shall include only that information and those conditions set forth in the RODs for the Site and the administrative record supporting the RODs. For purposes of Paragraph 16, the information and the conditions known to EPA shall include only that information and those conditions set forth in the RODs, the administrative record supporting the RODs, and information EPA places in the Site file maintained by EPA Region I following issuance of the RODs but prior to issuance of the Certification of Completion of the Remedial Action.

18. Reservations concerning Natural Resource Damages.

Notwithstanding any other provision of this Decree, the United States and the State, on behalf of their Natural Resource Trustees, reserve the right to institute proceedings against 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 Federal trustees (or, with respect to the State's covenant, unknown to the State

trustee) at the date of lodging of this Decree, that result in releases or threatened releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources, or (2) information received by the Federal trustees (or, with respect to the State's covenant, received by the State trustee) after the date of lodging of the Decree which indicates that there is injury or threat of 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 Federal trustees (or, with respect to the State's covenant, unknown, or of a magnitude greater than was known, to the State trustee) at the date of lodging of this Decree.

19. 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 13 for the United States and Paragraph 14 for the State. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by 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. liability for the disposal, release, or threat of release of any Waste Material within the Site after the date of lodging of the Consent Decree;
- d. criminal liability; and
- e. liability, if any, for any violations of federal or state law.

IX. COVENANT BY SETTLING DEFENDANTS

20. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, including any agency, department, or institution of the United States, or the State with respect to the Site or this Consent Decree, including, but not limited to the following: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), under CERCLA Sections 106(b)(2), 107, 111, 112, or 113, or any other provision of law; any claim against the United States including any department, agency, or instrumentality of the United States pursuant to CERCLA Sections 107 and 113 related to the Site; any claim under the United States Constitution, New Hampshire Constitution, 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 at the Site; or any claims arising out of response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute pre-authorization of a claim within the

meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. EFFECT OF SETTLEMENT

21. 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. 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 that 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.

22. With regard to claims for contribution against Settling Defendants for reimbursement of the United States' and the States' Past and Future Response Costs, compensation for damage to natural resources under the trusteeship of the Federal and State Trustees, and performance of the Remedial Action, the parties hereto agree that Settling Defendants are entitled to protection from contribution actions or claims to the extent provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and, as to state law claims, such additional protection as may be provided by New Hampshire RSA 507:7-h.

23. Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters relating to this Consent Decree, they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendants also

agree that, with respect to any suit or claim for contribution brought against them for matters relating to this Consent Decree, they will notify in writing the United States and the State 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 for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants 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 State 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 VII (Covenants Not to Sue by Plaintiffs).

XI. SITE ACCESS, NOTICE TO SUCCESSORS-IN-TITLE,
AND INSTITUTIONAL CONTROLS

25. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Settling Defendants shall record a certified copy of this Consent Decree with the Registry of Deeds for Rockingham County, New Hampshire. Thereafter, each deed, title, or other instrument conveying an interest in the Coakley Property (or

portion thereof) and/or any other property owned or controlled by one or more of the Settling Defendants in regard to which access or Institutional Controls is required for implementation of response actions relating to the Site, as provided in paragraphs 26 and 28, shall contain a notice of this Consent Decree and shall reference the recorded location of the Consent Decree.

b. The Settling Defendants and any person that subsequently acquires any interest (either from Settling Defendant(s) or a successor-in-title) in the Coakley Property (or portion thereof) and/or any other property owned or controlled by one or more of the Settling Defendants in regard to which access or Institutional Controls is required for implementation of response actions relating to the Site shall, at least 30 days prior to the conveyance of any interest in such property, give written notice of this Consent Decree to the grantee and written notice to EPA and the State 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. Such transfer shall take place only if the grantee agrees, as a part of the agreement to purchase or otherwise obtain the property, that it will comply with the obligations of the Settling Defendant(s) to provide access and/or institutional controls, as provided in paragraphs 26 and 28, with respect to such property.

c. In the event that one or more of the Settling Defendants sells or otherwise transfers any interest in the Coakley Property (or portion thereof) and/or any other property

owned or controlled by one or more of the Settling Defendants in regard to which access or Institutional Controls is required for implementation of response actions relating to the Site, the Settling Defendants' obligations under this Consent Decree, including, without limitation, their obligation to provide or secure access and institutional controls, pursuant to paragraphs 26 and 28, shall continue to be met by the Settling Defendants. In addition, if the United States and the State approve, the grantee may provide such access and institutional controls. In no event shall the conveyance of an interest in the Coakley Property (or portion thereof) and/or any other property owned or controlled by one or more of the Settling Defendants in regard to which access or Institutional Controls are required for implementation of response actions relating to the Site, release or otherwise affect the liability of the Settling Defendants to comply with the Consent Decree.

26. Access Commencing upon the date of lodging of this Consent Decree, the Settling Defendants, in consideration of the settlement of the claims asserted by the United States and State in this action, agree to provide the United States, the State, and their representatives, including EPA, NHDES, and their contractors, and all persons performing response actions at the direction of the United States and/or the State, access at all reasonable times to the Coakley Property and any other property owned or controlled by one or more of the Settling Defendants to which access is required for the implementation of response

actions for or in connection with the Site, including, but not limited to:

- a. Monitoring, investigation, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States or the State;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples; and
- e. Assessing the need for, planning, implementing, or enforcing response actions (including, without limitation, design, construction, operation, maintenance, monitoring, and use restrictions) at or pertaining to the Site.

If the United States and/or the State so requests, the Settling Defendants' provision of access for the implementation of response actions for or in connection with the Site shall include, without limitation, the Settling Defendants' granting and recordation in the registry of deeds of the County of Rockingham, New Hampshire, of rights or easement(s) of access, running with the property, on the Coakley Property and/or on any other property owned or controlled by one or more of the Settling Defendants to which access is required for the implementation of response actions for or in connection with the Site. Any such request by the United States and/or the State shall be accompanied by a sample, model, form, or draft of the document(s) granting the rights or easement(s) of access. Settling

Defendants shall obtain the approval of the United States and/or the State (whichever is/are requesting the access rights or easement(s)) as to the form and content of the document(s) granting the rights or easement(s) of access prior to the grant and recordation. Settling Defendants agree to submit draft grant(s) of access rights or easement(s) to the United States and/or the State, whichever is/are making the request, within 21 days of any such request by the United States and/or the State and to record grant(s) of access rights or easement(s), as approved by the United States and/or the State, within 15 days of approval by the United States and/or the State.

27. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

28. Institutional Controls

a. Settling Defendants shall take such actions as the United States and/or the State direct to secure Institutional Controls on the Coakley Property and any other property owned or controlled by one or more of the Settling Defendants for which Institutional Controls are determined by United States and/or the State to be required for implementation of response actions (including, without limitation, design, construction, operation, maintenance, monitoring, and use restrictions) for or pertaining to the Site.

b. Upon the request of the United States and/or the State, the Settling Defendants' securing of Institutional Controls shall include, without limitation, the Settling Defendants' filing and recordation in the registry of deeds of the County of Rockingham, New Hampshire, of declaration(s) of covenants, conditions, and restrictions regarding the property referred to in paragraph 28.a, that run with the property, setting forth the Institutional Controls applicable thereto. Any such request by the United States and/or the State shall be accompanied by a sample, model, form, or draft of the declarations. All such declaration(s) shall be enforceable by the United States, the State, and the Settling Defendants, and shall provide that these persons have the right to inspect the property to determine whether the declaration(s) are being complied with. In accordance with Section 104(j) of CERCLA, 42 U.S.C. § 9604(j), the United States' interest in the declarations shall terminate at such time as EPA determines that the remedial action for the Site is complete.

Settling Defendants shall obtain the approval of the United States and/or the State (whichever is requesting the declaration of covenants, conditions, and restrictions) of the content and form of the declaration(s) prior to the filing and recordation. Settling Defendants agree to submit draft declaration(s) of covenants, conditions, and restrictions within 21 days of any such request by the United States and/or the State and to record declaration(s) of covenants, conditions, and restrictions, as

approved by the United States and/or the State, within 15 days of approval by the United States and/or the State.

Declaration(s) required to be filed pursuant to this paragraph shall conform with local and State law in order to create an enforceable property restriction that runs with the land. If a question arises as to the enforceability of a declaration under State or local law after it has been filed, the United States and/or the State may require the Settling Defendants to secure an amended declaration that is enforceable under State and local law. Such amended declaration(s) shall be subject to the approval and filing requirements set forth above.

c. Settling Defendants shall not use any portion of the Coakley Property and/or any other property owned or controlled by one or more of the Settling Defendants in regard to which access or Institutional Controls are required for implementation of response actions relating to the Site in any manner that the United States or the State determines would adversely affect the integrity of any containment system, extraction system, treatment system, or monitoring system installed as part of the Remedial Action.

XII. ACCESS TO INFORMATION

29. Settling Defendants shall provide to EPA and the State, 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, 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 Site.

30. Confidential Business Information and Privileged Documents

a. 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). Documents or information determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information required to be produced under this Consent Decree are privileged under the attorney-client privilege or any other privilege recognized by federal or State law. If the 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 subject of the document, record, or information; and (6) the privilege asserted. However, no documents, reports or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiffs in redacted form to mask the privileged information only.

31. 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.

XIII. RETENTION OF RECORDS

32. Until 10 years after the entry of this Consent Decree, Settling Defendants shall preserve and retain all records and documents now in their possession or control or that come into their possession or control that relate in any manner to response actions taken at the Site or the liability of any person for response actions conducted and to be conducted at the Site.

33. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State

at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to the EPA or the State.

34. Settling Defendants may assert that certain documents, records, and other information required to be produced under this Consent Decree are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall comply with the requirements set forth in Paragraph 30.b. However, no documents reports, or other information created or generated pursuant to the requirements of this or any other consent decree with the United States shall be withheld on the grounds that they are privileged. If a claim of privilege applies only to a portion of a document, the document shall be provided to Plaintiff in redacted form to mask the privileged information only. Settling Defendants shall retain all documents, records, and information that they claim to be privileged until the United States or the State has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendants' favor.

XIV. NOTICES AND SUBMISSIONS

35. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to the other, 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 Party in writing. 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 State, and the 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: 90-11-2-678A

T. David Plourde
United States Attorney's Office
55 Pleasant St., Rm. 312
Concord, New Hampshire 03301-3904

Cynthia E. Catri
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region I
JFK Federal Building, RCV
Boston, MA 02203
Re: Coakley Landfill Superfund Site

United States Department of the Interior
Northeast Region
Office of the Regional Solicitor
Attn: Marcia Gittes
One Gateway Center - Suite 612
Newton Corner, Massachusetts 02158

As to the State:

Anne E. Renner
Assistant Attorney General
Environmental Protection Bureau
Department of Justice
33 Capitol Street
Concord, NH 03301-6397

Carl Baxter
Administrator
Waste Management Engineering
New Hampshire Department of Environmental Services
6 Hazen Drive
Concord NH 03301

As to Settling Defendants:

Nancer Ballard/Nina Mishkin
Goodwin, Procter & Hoar
Exchange Place
Boston, Massachusetts 02109-2881

Ronald C. Coakley
10 October Drive
Greenland, New Hampshire 03840

XV. RETENTION OF JURISDICTION

36. This Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Consent Decree.

XVI. APPENDIX

37. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the description and/or map of the Site; "Appendix B" is the Escrow Agreement.

XVII. MODIFICATION

38. Material modifications to this Consent Decree may be made by written document(s) signed on behalf of all of the parties and approved by the Court. Other modifications to this Consent Decree may be made by written document(s) signed on behalf of all of the parties and filed with the Court.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

39. This Consent Decree shall be subject to a thirty (30) day public comment period consistent with Section 122(d)(2) of

CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. Settling Defendants consent to the entry of this Consent Decree without further notice. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. The State 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 State'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 State 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 State reserves its right to withdraw from this Consent Decree.

40. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable 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.

XIX. SIGNATORIES/SERVICE

41. The undersigned representative of Settling Defendants, the State, and the Assistant Attorney General for the Environment

and Natural Resources Division of the United States Department of Justice certify that they are fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such parties to this document.

42. Settling Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of the Settling Defendants with respect to all matters arising under or relating to this Consent Decree. Settling Defendants waive any objection to service made by mail to the person so identified.

XX. FINAL JUDGMENT

43. Upon entry by the Court this Consent Decree shall constitute a final judgment for purposes of Rule 54 of the Federal Rules of Civil Procedure.

The Court finds that the Consent Decree is fair, reasonable and in the public interest and that there is no just reason to delay entry of judgment.

SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Coakley Landfill, Inc., et. al., CERCLA # 0164, DOJ Case No. 90-11-2-678A, relating to the Coakley Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date:

6/22/95



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

Date:

7-6-95



Elizabeth Yu
Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
1425 New York Avenue, N.W.
Washington, DC 20005
(202) 514-2277

Paul M. Gagnon
United States Attorney

Date:


July 7, 1995




T. David Plourde
Assistant United States Attorney
55 Pleasant Street, Rm. 312
Concord, New Hampshire 03301-3904

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Coakley Landfill, Inc., et. al., CERCLA # 0164, DOJ Case No. 90-11-2-678A, relating to the Coakley Landfill Superfund Site.

Date: 5/12/95


John P. DeVillars
Regional Administrator
New England Region
U.S. Environmental Protection
Agency
JFK Federal Building
Boston, MA 02203

Date: 5/1/95


Gregory M. Kennan
Associate Regional Counsel
U.S. Environmental Protection
Agency
JFK Federal Building, RCV
Boston, MA 02203
(617) 565-3446

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Coakley Landfill, Inc., et. al., CERCLA # 0164, DOJ Case No. 90-11-2-678A, relating to the Coakley Landfill Superfund Site.

FOR THE STATE OF NEW HAMPSHIRE

JEFFREY R. HOWARD
ATTORNEY GENERAL

Date: 5-17-95

By: Steven M. Howard *Steven M. Howard*
for *Associate Attorney General*

Anne E. Renner
Assistant Attorney General
Environmental Protection Bureau
Office of the Attorney General
33 Capitol Street
Concord, New Hampshire 03301
(603) 271-3679

ROBERT W. VARNEY
COMMISSIONER, DEPARTMENT OF
ENVIRONMENTAL SERVICES,
AS TRUSTEE OF NATURAL RESOURCES

Date: 5-5-95

Robert W. Varney
Robert W. Varney
Commissioner
New Hampshire Department of
Environmental Services
6 Hazen Drive
Concord, New Hampshire 03301
(603) 271-3509

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Coakley Landfill, Inc., et. al., CERCLA # 0164, DOJ Case No. 90-11-2-678A, relating to the Coakley Landfill Superfund Site.

FOR SETTLING DEFENDANT
RONALD COAKLEY INDIVIDUALLY
AND AS A PARTNER OF RONALD
COAKLEY, NEIL COAKLEY,
DEBORAH BORZA, PATRICIA CASE,
A PARTNERSHIP D/B/A ESTATE OF
PATRICK J. COAKLEY LANDFILL

Date:

4/3/95


Ronald C. Coakley

Address:

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

Name:	<u>Nancer Ballard, Goodwin Procter & Hoar</u>
Title:	<u>Attorney</u>
Address:	<u>Exchange Place</u>
	<u>Boston, MA 02109-2881</u>

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Coakley Landfill, Inc., et. al., CERCLA # 0164, DOJ Case No. 90-11-2-678A, relating to the Coakley Landfill Superfund Site.

FOR SETTTLING DEFENDANT
COAKLEY LANDFILL, INC.

Date: 4/3/95

Ronald C. Coakley
Ronald C. Coakley

Title:
Address:

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

Name:	<u>Nancer Ballard</u>
Title:	<u>Attorney</u>
Address:	<u>Goodwin, Procter & Hoar</u> Exchange Place Boston, MA 02109-2881

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Coakley Landfill, Inc., et. al., CERCLA # 0164, DOJ Case No. 90-11-2-678A, relating to the Coakley Landfill Superfund Site.

FOR SETTLING DEFENDANT
NEIL COAKLEY, A PARTNER OF
RONALD COAKLEY, NEIL COAKLEY,
DEBORAH BORZA, PATRICIA CASE,
A PARTNERSHIP D/B/A ESTATE OF
PATRICK J. COAKLEY LANDFILL

Date: April 5, 1998

Neil Coakley
Neil Coakley

Address:

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

Name:	<u>Nancer Ballard</u>
Title:	<u>Attorney</u>
Address:	<u>Goodwin, Procter & Hoar</u>
	<u>Exchange Place</u>
	Boston, MA 02109-2881

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Coakley Landfill, Inc., et. al., CERCLA # 0164, DOJ Case No. 90-11-2-678A, relating to the Coakley Landfill Superfund Site.

FOR SETTLING DEFENDANT
PATRICIA CASE, A PARTNER OF
RONALD COAKLEY, NEIL COAKLEY,
DEBORAH BORZA, PATRICIA CASE,
A PARTNERSHIP D/B/A ESTATE OF
PATRICK J. COAKLEY LANDFILL

Date:

4/3/95


Patricia Case

Address:

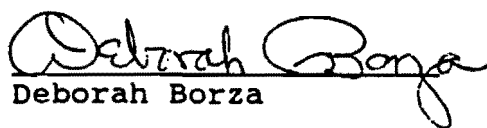
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:	<u>Nancer Ballard</u>
Title:	<u>Attorney</u>
Address:	<u>Goodwin, Procter & Hoar</u>
	<u>Exchange Place</u>
	Boston, MA 02109-2881

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Coakley Landfill, Inc., et. al., CERCLA # 0164, DOJ Case No. 90-11-2-678A, relating to the Coakley Landfill Superfund Site.

FOR SETTLING DEFENDANT
DEBORAH BORZA, A PARTNER OF
RONALD COAKLEY, NEIL COAKLEY,
DEBORAH BORZA, PATRICIA CASE,
A PARTNERSHIP D/B/A ESTATE OF
PATRICK J. COAKLEY LANDFILL

Date: 4/5/95


Deborah Borza

Address:

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

Name:	<u>Nancer Ballard</u>
Title:	<u>Attorney</u>
Address:	<u>Goodwin, Procter & Hoar</u>
	<u>Exchange Place</u>
	Boston, MA 02109-2881

Appendix A

Coakley Landfill Site General Description

The Coakley Landfill Site (the Site) is situated on, inter alia, approximately 92 acres of land located within the towns of Greenland and North Hampton, Rockingham County, New Hampshire (the "Coakley Property"). The actual landfill area is situated within the southernmost portion of the Coakley Property, almost completely within the Town of North Hampton, covering approximately 27 acres. The Coakley Property is located about 400 to 800 feet west of Lafayette Road (U.S. Route 1), directly south of Breakfast Hill Road, and about 2.5 miles northeast of the center of the Town of North Hampton. The Greenland-Rye town line forms a major portion of the eastern boundary of the Coakley Property. Under CERCLA § 101(9), the Site also includes all areas where hazardous substances from the Coakley Property have come to be located.

APPENDIX B

ESCROW AGREEMENT

This Escrow Agreement (the "Agreement") is made this 5th day of April, 1995, by and among Coakley Landfill, Inc., Ronald C. Coakley individually, and Ronald C. Coakley, Neil Coakley, Deborah Borza, Patricia Case, a partnership doing business as the Estate of Patrick J. Coakley Landfill, which are the settling defendants (the "Settling Defendants") pursuant to a Consent Decree to be filed in the United States District Court for the District of New Hampshire in the action entitled United States of America and State of New Hampshire v. Coakley Landfill, Inc., et al., Civil Action No. 95-339-M (the 95-338-M "Consent Decree"), a copy of which is annexed hereto, and Goodwin, Procter & Hoar, in its capacity as escrow agent (the "Escrow Agent").

WHEREAS, the Settling Defendants, in order to comply with the terms of the Consent Decree, are required to make a certain payment to the United States; and

WHEREAS, the Settling Defendants wish to establish an escrow account for purposes of receiving the payment required by the Consent Decree in the period prior to approval of the Consent Decree and through the conclusion of any appeals, as determined by Section V of the Consent Decree.

NOW THEREFORE, for good and valuable consideration, the delivery and receipt of which is hereby acknowledged, the Settling Defendants and the Escrow Agent hereby agree as follows:

1. Funding

The Settling Defendants shall deposit \$842,400 with the Escrow Agent at its offices at Exchange Place, Boston, Massachusetts within ten (10) business days of the Settling Defendants' signing of the Consent Decree. The Settling Defendants shall not be entitled to withdraw any funds that they have deposited with the Escrow Agent except upon termination of this Escrow Agreement as provided in Paragraph 6(b) hereof.

2. Escrow Fund

The Escrow Fund shall consist of the combined amount of the \$842,400 deposited pursuant to Paragraph 1 above and any interest accruing on those funds, and any Interest paid pursuant to Section VII of the Consent Decree. The Escrow Fund will be established subject to the terms and conditions of this Agreement, upon receipt by the Escrow Agent of the payment from the Settling Defendants pursuant to Paragraph 1 above on or after the date first written above. The Escrow Agent will hold the Escrow Fund in accordance with the terms and provisions of this Escrow Agreement. The Escrow Agent hereby submits to the jurisdiction and venue of the United States District Court for the District of New Hampshire in connection with any litigation arising out of the Escrow Agreement. Within ten (10) business days of the Settling Defendants' signing of the Consent Decree, the Settling

Defendants shall provide to the Escrow Agent an original executed signature page to this Escrow Agreement. Copies of the Escrow Agreement shall be provided to those persons listed in Paragraph 7(a) of the Escrow Agreement.

3. Investment of Escrow Fund

Pending disposition under this Agreement, the Escrow Fund shall be invested in a federally insured account bearing interest on commercially reasonable terms. The Escrow Agent shall report to the Settling Defendants annually the interest earned on the payment made by the Settling Defendants. Otherwise, the Escrow Agent shall have no tax reporting duties with respect to the Escrow Fund. No amount shall be deducted from the Escrow Fund for any tax liability.

4. Escrow Agent Fees and Expenses

The Escrow Agent's fees and reasonable expenses in administering this Escrow Agreement, including the reasonable fees and expenses of its counsel, shall be paid by the Settling Defendants and shall not be deducted from the Escrow Fund.

5. Termination

This Escrow Agreement will terminate upon the earlier to occur of (a) receipt by the Escrow Agent of written notice from counsel for the Settling Defendants that the Consent Decree has been approved and entered by the United States District Court for the District of New Hampshire, with all rights of appeal exhausted as provided in Paragraph 3.h of the Consent Decree; or (b) receipt by the Escrow Agent of written notice from both the United States and counsel for the Settling Defendants either that the United States has withdrawn its consent or that the Consent Decree has been voided, as provided in Section XVIII of the Consent Decree. As used herein, "counsel for the Settling Defendants" shall mean at least one of the lawyers identified in Paragraph 7(b).

6. Distribution of Funds

(a) Upon termination of this Escrow Agreement in accordance with Paragraph 5(a) hereof, the Escrow Agent shall disburse the Escrow Fund, including interest accrued thereon, to the United States and to the State of New Hampshire in accordance with the procedures set forth in Section VI of the Consent Decree.

(b) Upon termination in accordance with the provisions of Paragraph 5(b) hereof, the Escrow Agent shall disburse the Escrow Fund, plus interest accrued thereon, to the Settling Defendants.

7. Notices

All notices required to be given hereunder shall be in writing, and shall be given by hand, telecopy, by Federal Express or other reputable overnight courier, or shall be mailed by first class registered or certified mail, postage prepaid, return receipt requested, and shall be given as follows:

(a) **To the United States:**

Chief, Environmental Enforcement Section
U.S. Department of Justice
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin Station (by mail)
Washington, D.C. 20044
1425 New York Avenue, Room 13071 (by overnight courier or hand)
Washington, D.C. 20005
202-616-2427 (by telecopy)

Cynthia E. Catri/Gregory M. Kennan
U.S. Environmental Protection Agency
Region I, Office of Regional Counsel
J.F. Kennedy Federal Building
Boston, MA 02203

(b) **To Settling Defendants:**

Nancer Ballard/Nina Mishkin
Goodwin, Procter & Hoar
Exchange Place
Boston, Massachusetts 02109-2881

Ronald C. Coakley
10 October Drive
Greenland, New Hampshire 03840

(c) **To the Escrow Agent:**

Goodwin, Procter & Hoar, as Escrow Agent for Ronald C. Coakley, et al.
Exchange Place
Boston, MA 02109-2881

Any party to this Agreement may from time to time designate other persons to whom notice shall be given by written notice to all other parties given as required by this Paragraph.

8. Responsibility of Escrow Agent

The Escrow Agent shall be entitled to rely upon any notice, signature or writing which it shall in good faith believe to be genuine and to be signed or presented by a proper party or parties. The Escrow Agent may consult with its counsel regarding such matters, shall be entitled to full reimbursement pursuant to Paragraph 4 in connection therewith, and shall not be held liable for any action taken or omitted in good faith on advice of its counsel.

The Settling Defendants agree to indemnify, protect and hold the Escrow Agent harmless from any and all loss, liability and expense for anything which is done or omitted by it in good faith and not contrary to the express provisions of this Escrow Agreement, but not for any loss, liability or expense that may be occasioned by the Escrow Agent's own gross negligence or willful misconduct.

9. Jurisdiction

This Escrow Agreement shall be governed by and be construed in accordance with the laws of the State of New Hampshire.

10. Resignation, Removal, Successor

(a) The Escrow Agent may resign from this Escrow Agreement, and thereby become discharged from the obligations hereby created, by notice in writing given to the United States and counsel for the Settling Defendants not less than thirty (30) days before such resignation is to take effect.

(b) The Escrow Agent may be removed at any time by an instrument or concurrent instruments in writing delivered to the Escrow Agent and signed by counsel for the Settling Defendants.

(c) If at any time hereafter the Escrow Agent shall resign, be removed, be dissolved or otherwise become incapable of acting, or the position of the Escrow Agent shall become vacant for any of the foregoing reasons or for any other reason, the counsel for the Settling Defendants shall promptly appoint a successor to the Escrow Agent after giving notice to, and receiving approval to do so from, counsel for the United States. Upon such appointment, such successor shall execute, acknowledge and deliver to its predecessor, and also to counsel for the Settling Defendants, an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, shall become fully vested with all the rights, immunities, and powers, and shall be subject to all of the duties and obligations of its predecessor; and every predecessor Escrow Agent shall promptly deliver all property and monies held by it hereunder to such successor.

In the event that a successor has not been appointed within thirty (30) days of the date of such resignation, removal, dissolution, incapacity or vacancy, the Escrow Agent shall deposit the full amount of the Escrow Fund with the Clerk of the United States District Court

for the District of New Hampshire. Upon so depositing the Escrow Fund, the Escrow Agent shall be released from all future liability under the terms hereof.

11. Disputes

The Escrow Agent may seek the advice of the United States and counsel for the Settling Defendants with respect to any uncertainty it may have concerning its obligations under this Escrow Agreement. If the United States and counsel for the Settling Defendants cannot agree as to how to resolve any such uncertainty, any dispute with respect thereto shall be presented to the United States District Court for the District of New Hampshire. Nothing herein shall impair the Escrow Agent's right to seek advice with respect to this Escrow Agreement from its own counsel.

12. Headings

The headings in this Escrow Agreement are merely for convenience and shall not be used in interpreting any of the provisions.

13. Binding Effect: Successors and Assigns

This Escrow Agreement shall be binding upon, and inure to the benefit of, the respective parties hereto and their successors and assigns.

14. Counterparts

This Escrow Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15. Modification

This Escrow Agreement may not be amended, altered or modified except by written instrument duly executed by all of the parties to this Agreement and without express written approval of counsel for the United States.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed as an agreement under seal as of the day and year first written above.

ESCROW AGENT

By: 

FOR GOODWIN PROTEST HOAR

SETTLING DEFENDANTS

Date: 4/3/95

By: Ronald C. Coakley
Ronald C. Coakley, Individually
and as Partner of Estate of
Patrick J. Coakley Landfill
[Address]

PO Box 190
Greenland, N.H. 03840

Date: 4/3/95

By: Ronald C. Coakley, Inc.
Coakley Landfill, Inc. by
Ronald C. Coakley
[Address]

PO Box 190
Greenland, N.H. 03840

Date: 4/5/95

By: Neil Coakley
Neil Coakley, as Partner of Estate
of Patrick J. Coakley Landfill
[Address]

Date: 4/3/95

By: Patricia Case
Patricia Case, as Partner of Estate
of Patrick J. Coakley Landfill
[Address]

79 Breakfast Hill Rd
Greenland, N.H. 03840

Date: 4/5/95

By: Deborah Borza
Deborah Borza, as Partner of Estate
of Patrick J. Coakley Landfill
[Address]

80 Maple Drive
Greenland, N.H. 03840