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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 Section 107 of the Comprehensive Environmental Response, Compensation, Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), against Defendant New Hampshire Ball Bearing, Inc. ("NHBB" or the "Settling Defendant").

B. The United States in its complaint seeks reimbursement of response costs incurred and to be incurred by EPA and the Department of Justice for response actions in connection with the release or threatened release of hazardous substances at the South Municipal Water Supply Well Site, located in Peterborough, New Hampshire ("the Site"), and a declaration of Defendant's liability for further response costs.

C. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the federal natural resource trustees on April 16, 1990, 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 trustee(s) to participate in the negotiation of the Consent Decree.

D. By entering into this Consent Decree, Settling Defendant does not admit, and specifically denies, any liability arising out of the transactions or occurrences alleged in the complaint.

E. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on September 21, 1984, EPA placed the Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B.

F. Pursuant to Section 122(a) of CERCLA, 42 U.S.C. § 9622(a), EPA issued a general notice letter to NHBB on January 30, 1985, and requested that NHBB conduct a Remedial Investigation and Feasibility Study ("RI/FS") for the Site. On July 26, 1986, NHBB entered into an Administrative Order by Consent ("AOC") to conduct the RI/FS. NHBB completed the RI/FS in July, 1989.

G. Based upon the results of the RI/FS, EPA issued the Record of Decision ("1989 ROD") on September 27, 1989, selecting the Remedial Action at the Site. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action.

H. The remedy, as described in the 1989 ROD, has six components, including: (1) groundwater pump-and-treat using air stripping with emissions controls for volatile organic compounds ("VOCs"); (2) in-situ vacuum extraction for contaminated soils; (3) excavation and/or dredging of sediments contaminated with polycyclic aromatic hydrocarbons ("PAHs") and polychlorinated biphenyls ("PCBs") with off-site disposal; (4) restoration of wetlands affected by sediment remediation; (5) long-term environmental monitoring; and (6) institutional controls to

restrict use of the South Well and to prohibit installation of private drinking water wells.

I. On March 6, 1990, pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622, EPA sent a Special Notice Letter to NHBB, informing it that it was a potentially responsible party ("PRP") for hazardous substances released at the Site. The letter also requested that NHBB conduct the Remedial Design/Remedial Action ("RD/RA") implementing the 1989 ROD, reimburse EPA for past costs, plus interest, and reimburse EPA for future costs.

J. On May 8, 1990, NHBB sent a letter to EPA, including an offer responding to the Special Notice Letter. This offer was rejected by EPA.

K. Pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606, EPA issued a Unilateral Administrative Order ("UAO") to NHBB on June 19, 1990, requiring NHBB to perform the 1989 ROD. NHBB has been implementing the 1989 ROD pursuant to the UAO. Except as specifically provided herein, this settlement supplements but does not supersede the UAO.

L. On May 6, 1993, EPA issued an Explanation of Significant Differences ("ESD") for the Remedial Action at the Site. The ESD modified the selected remedy as follows: (1) the pump and treat system will be enhanced by "air sparing" (forcing ambient air into the groundwater); (2) reducing the air emissions controls for the air strippers; and (3) all treated groundwater will be discharged to the Contoocook River, located on the Site.

M. On February 3, 1997, EPA issued a further ESD for the Remedial Action at the Site.

N. 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.

O. 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.

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, 1345 and 1355, and 42 U.S.C. §§ 9607 and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, and without effect on any other matter, Settling Defendant waives all objections and defenses that it 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 Settling Defendant and its agents, employees, successors and assigns, and upon the United States on behalf of EPA, the Department of the Interior ("DOI") and the National Oceanographic and Atmospheric Administration ("NOAA"). 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 Parties under this Consent Decree.

IV. DEFINITIONS

3. 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. 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. "Consent Decree" shall mean this Decree and any attached appendices.

c. "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.

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

e. "Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States will incur or pay for response actions for oversight of implementation by NHBB of the Remedial Action at the Site after the date of lodging of this Decree, and costs that the United States may incur or pay in connection with claims asserted relating to the Remedial Action in Millard v. United States, No. 95-649L (Ct. Fed. Claims).

f. "Interest" 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, EPA shall compound on an annual basis.

g. "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, and including any amendments thereto.

h. "Natural Resource Damages" shall mean costs, recoverable under Section 107 of CERLCA, for injury to, destruction of or loss of any and all natural resources at the

Site, including the reasonable costs of assessing such injury, destruction or loss.

i. "Natural Resource Trustees" shall mean the Secretary of the Interior and the Administrator of the National Oceanographic and Atmospheric Administration ("NOAA"), and the Department of Commerce, who are designated under Section 300.600 of the National Contingency Plan to act on behalf of the United States as trustees for natural resources within their respective responsibilities.

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

k. "Parties" shall mean the United States and Settling Defendant.

l. "Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, plus accrued interest, that the United States has incurred and paid for response actions at the Site prior to the date of lodging of this Consent Decree.

m. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the Record of Decision, Section VII of the UAO, and the 1997 Statement of Work for the UAO and any amendments thereto.

n. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site issued on

September 27, 1989, and all attachments thereto, as modified by the Explanation of Significant Differences issued by EPA on May 6, 1993, and the Explanation of Significant Differences issued by EPA on February 3, 1997.

o. "Remedial Action" shall mean the response actions at the Site set forth in the Record of Decision as amended by the ESD.

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

q. "Settling Defendant" shall mean New Hampshire Ball Bearings, Inc.

r. "Site" shall mean the South Municipal Water Supply Well Superfund Site, located in Peterborough, New Hampshire. The Site is depicted on the map included in Appendix A to this Consent Decree.

s. "United States" shall mean the United States of America and its agencies and instrumentalities.

t. "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); and (4) any "solid waste" as defined by Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. REIMBURSEMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

4. Payment of Response Costs to the United States.

a. The Settling Defendant shall pay to the United States \$1,125,000, plus Interest, as settlement of claims for Past and Future Response Costs. Interest on the payments set forth in Paragraphs 4 and 5 shall begin to accrue as of the date this Consent Decree is lodged with the Court.

b. The payment required by Paragraph 4(a) above shall be made within 30 days of the effective date of this Consent Decree, or within 20 days of the date that payment instructions are provided, whichever is later, by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the U.S.A.O. file number, the EPA Region and Site/Spill ID # 01-62, and DOJ Case Number 90-11-2-551A. Payment shall be made in accordance with instructions provided to the Settling Defendant following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern time) will be credited on the next business day. Settling Defendant shall send written notice of the EFT to the United States as specified in Section XIV (Notices and Submissions) and to:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
JFK Federal Building, RCG
Boston, MA 02203

5. Payment of Natural Resource Damages Costs.

a. The Settling Defendant shall pay to the United States a total of \$93,000, plus Interest, as settlement for any claims the United States on behalf of the Secretary of the Interior may have against Settling Defendant for Natural Resource Damages at the Site for Natural Resources under the trusteeship of DOI.

b. Payment shall be made in the form of a certified check payable to the Secretary of the Interior within 30 days of the effective date of this Decree. The payment required by Paragraph 5(a) shall be made in the form of a certified check made payable to "U.S. Department of the Interior," and referencing Account Number 14X5198, and the name of the Site. The Settling Defendant 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, Esq., U.S. 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 XIV (Notices and Submissions).

VI. FAILURE TO MAKE TIMELY PAYMENTS

6. Interest on Late Payments. In the event that any payment required by Section V is not made when due, Interest

shall accrue on the unpaid balance, through the date of payment.

7. Stipulated Penalty.

a. If any amounts due to the United States under Paragraph 4 of this Consent Decree are not paid by the required date(s), the Settling Defendant shall pay as a stipulated penalty, in addition to the Interest required by Paragraph 4, \$7,500 per day that each such payment is late.

b. If any amounts due to the United States under Paragraph 5 of this Consent Decree are not paid by the required date(s), the Settling Defendant shall pay as a stipulated penalty, \$3,500 per day that each such payment is late.

c. Stipulated penalties are due and payable within 30 days of the Settling Defendant's failure to timely make any payment due under this Consent Decree.

d. All payments under Paragraph 7(a) 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 01-62 and DOJ Case Number 90-11-2-551A. Copies of checks paid pursuant to Paragraph 7(a), 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 the United States has notified the Settling Defendant of the violation or made a demand for payment.

e. All payments under Paragraph 7(b) shall be made in the form of a certified check payable to "U.S. Department of the Interior," and referencing Account Number 14X5198 and the name of the Site. The Settling Defendant 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, Esq., U.S. 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 XIV (Notices and Submissions). Penalties shall accrue as provided above regardless of whether the United States has notified the Settling Defendant of the violation or made a demand for payment.

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

9. Payments made under Paragraphs 5-7 shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Defendant's failure to make timely payments required by this Consent Decree.

VII. CONTINUED PERFORMANCE OF WORK UNDER UAO

10. The Settling Defendant shall continue to implement the Remedial Action pursuant to the UAO until the Performance

Standards are achieved and for so long thereafter as is otherwise required under the UAO. The requirements of Paragraph 11 of this Consent Decree supersede the requirements of Section XVII (EPA Periodic Review), Section XVIII (Additional Work), Section XXVII (Reimbursement of Response Costs) and Section XXX (No Release of Liability) of the UAO. Settling Defendant shall continue to comply with the obligations of the UAO except as specifically set forth in this Consent Decree.

11. a. If EPA determines that modification to the work specified in the UAO SOW and/or in work plans developed pursuant to the UAO SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the UAO SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. If Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Settling Defendant may seek dispute resolution pursuant to Section VIII (Dispute Resolution). The UAO SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

c. Settling Defendant shall implement any work required by any modifications determined by EPA to be necessary pursuant to this Paragraph and incorporated in the UAO SOW and/or

in work plans developed pursuant to the UAO SOW in accordance with schedules set forth therein and approved by EPA.

d. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in the UAO or any modifications thereto.

12. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the UAO SOW, or the SOW Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the UAO SOW and the Work Plans will achieve the Performance Standards.

13. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

14. Opportunity To Comment. Settling Defendant and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of reviews conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

15. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the United States reserves the right to seek

performance of or payment for such response actions by the Settling Defendant. The Settling Defendant reserves the right to oppose such payment or performance except that the Settling Defendant may not challenge or otherwise contest the terms or validity of the UAO or the ROD, and except as provided in Paragraph 42. Nothing in this Paragraph shall affect the Settling Defendant's obligations in Paragraph 11.

VIII. DISPUTE RESOLUTION

16. a. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to Paragraphs 10 and 11 and Section XVI of this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

b. 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 20 days from the time 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 party a written Notice of Dispute.

c. At any time during the informal dispute resolution period, any party to this Consent Decree may propose the use of a mediator to assist in resolving the dispute. Upon the written

agreement of the parties to the dispute, the period for informal dispute resolution may be extended for the purpose of mediating the dispute. Formal dispute resolution, as governed by the procedures set forth in Paragraphs 18 and 19, shall commence immediately upon the termination of the informal dispute resolution period. The decision to engage in or continue mediation shall be in the sole discretion of each party and is not subject to dispute resolution or judicial review. Mediation shall be conducted in accordance with then-applicable policies of the Plaintiff as mutually agreed to by the Parties. Any fees or expenses incurred in connection with the mediation shall be paid in accordance with the agreement of the Parties at that time. The parties agree that they shall, after the Consent Decree is signed by Settling Defendant, (1) prepare a list of mediators agreeable to the parties from which a mediator may be selected, although this list shall not preclude any party from proposing to add a mediator or mediators to the list or from proposing a different mediator for a specific dispute; and (2) prepare and execute a confidentiality agreement which will apply to all mediated discussions under this Paragraph.

17. a. 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 15 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United

States, as provided in Paragraph 45 (Notices and Submissions), 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 Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 18 or Paragraph 19.

b. Within 15 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant 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. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 18 or Paragraph 19. Within 10 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 18 or 19, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals 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 18 and 19.

18. Formal dispute resolution for disputes pertaining to the 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. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions or the validity of the UAO. 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.

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 parties to the dispute.

b. The Director of the Office of Site Remediation and Restoration, EPA Region 1, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 18.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 18.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 18.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion 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 a response to Settling Defendant's motion within thirty days.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Director of the Office of Site Remediation and Restoration 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 18.a.

19. 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 Defendant's Statement of Position submitted pursuant to Paragraph 17, the Director of the Office of Site Remediation and Restoration, EPA

Region I, will issue a final decision resolving the dispute. The Division Director's decision shall be binding on the Settling Defendant unless, within 10 days of receipt of the decision, the Settling Defendant files with the Court and serves on the Parties a motion for judicial review of the decision 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 a response to Settling Defendants' motion within thirty days.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

20. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree or the UAO, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 23. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties).

IX. STIPULATED PENALTIES

21. Settling Defendant shall be liable to the United States for stipulated penalties in the amounts set forth below for failure to comply with the requirements of Paragraph 11 of this Consent Decree.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 30th day
\$7,500	31st day and thereafter

22. In the event that EPA assumes performance of a portion or all of the work required by Paragraph 11, pursuant to Paragraph 36 of Section X (Covenants Not to Sue by Plaintiff), Settling Defendant shall be liable for a stipulated penalty in the amount of \$125,000.

23. All penalties under this Section 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. However, stipulated penalties shall not accrue: (1) with respect to a decision by the Director of the Office of Site Remediation and Restoration, EPA Region 1, under Paragraphs 18 or 19 of Section VIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (2) with respect to judicial review by this Court of any dispute under Section VIII (Dispute

Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

24. Following EPA's determination that the Settling Defendant has failed to comply with a requirement of Paragraph 11 of this Consent Decree, EPA may give Settling Defendant written notification of the same and describe the noncompliance. EPA may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a violation.

25. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section VIII (Dispute Resolution). All payments to the United States under this Section shall be paid in the manner set forth in Paragraph 7.d and shall indicate that the payment is for stipulated penalties. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XIV (Notices and Submissions).

26. The payment of penalties shall not alter in any way Settling Defendant's responsibility to complete the performance of its obligations under this Consent Decree.

27. Penalties shall continue to accrue as provided in Paragraph 21 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 that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA 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, Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

28. a. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings

to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 25.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendant's 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. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is collected under this Section, except in the case of a willful violation of the Consent Decree.

29. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

X. COVENANTS NOT TO SUE BY PLAINTIFF

30. Past and Future Costs In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 32, 33 and 35, the United States on behalf of EPA covenants not to sue or to take administrative action against Settling Defendant pursuant to

Section 107(a) of CERCLA for the reimbursement of Past Response Costs and Future Response Costs, as defined herein, incurred or to be incurred at the Site. The covenant not to sue in this Paragraph shall take effect upon the receipt by the United States of all payments required by Paragraph 4 of Section V and 7(a) of Section VI of this Consent Decree. Except as to payments under Paragraph 4, this covenant not to sue is conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree. This covenant not to sue extends only to the Settling Defendant and does not extend to any other person.

31. Natural Resource Damages In consideration of the actions and payments that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 32, 33, and 35, the United States, on behalf of the Natural Resource Trustees, covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107 of CERCLA for reimbursement of Past Response Costs and Future Response Costs, as defined herein, incurred or to be incurred at the Site, and for Natural Resource Damages, as defined herein, for resources under the trusteeship of the Natural Resource Trustees. This covenant not to sue shall take effect upon the receipt by the United States of the payments required by Paragraph 5 of Section V and Paragraph 7(b) of Section VI of this

Consent Decree. This covenant not to sue extends only to the Settling Defendant and does not extend to any other person.

32. 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 a new action, or to issue an administrative order seeking to compel Settling Defendant (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:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received, in whole or in part,

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

33. 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 a new action, or to issue an administrative order seeking to compel Settling Defendant (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:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received,
in whole or in part,

and EPA determines that 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.

34. For purposes of Paragraph 32, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was modified by the 1997 ESD and set forth in the Record of Decision for the Site, the 1993 ESD, the 1997 ESD, the administrative records supporting the Record of Decision and the 1993 and 1997 ESDs. For purposes of Paragraph 33, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the 1993 ESD, the 1997 ESD, the administrative record supporting the Record of Decision and the 1993 and 1997 ESDs, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of the UAO or this Consent Decree prior to Certification of Completion of the Remedial Action.

35. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraphs 30 and 31. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances outside of the Site;
- c. liability for additional response actions that EPA determines in accordance with CERCLA and the NCP are necessary at the Site but that cannot be required pursuant to Paragraph 11 (Continued Performance of Work);
- d. criminal liability;
- e. liability for any other violations of federal or state law;
- f. liability for future disposal of hazardous substances at the Site.

36. Work Takeover. In the event EPA determines that Settling Defendant has ceased implementation of any portion of the work required by Paragraph 11, is seriously or repeatedly

deficient or late in its performance of the work, or is implementing the work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section VIII (Dispute Resolution) to dispute EPA's determination that takeover of the work is warranted under this Paragraph. Costs incurred by the United States in performing the work pursuant to this Paragraph shall be reimbursed by Settling Defendant in accordance with the procedures set forth in Section VI (Reimbursement of Response Costs).

37. Except as provided in Paragraphs 11, 15, 30 and 31, nothing contained herein shall in any way limit or restrict the response and enforcement authority of the United States to initiate appropriate action, whether judicial or administrative, under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9607, or any other provision of law, against the Settling Defendant or against any other person or entity not a party to this Decree.

XI. COVENANTS BY SETTLING DEFENDANT

38. a. Except as provided in Paragraph 38.b, Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency, or instrumentality of the United States, 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), under CERCLA Sections 106(b)(2), 107, 111, 112, or 113, or any other provision of law; any claim pursuant to CERCLA Sections 107 and 113 related to the Site; any claim for costs, fees or expenses incurred in this action or related to the Site, including claims under 28 U.S.C. § 2412 (Equal Access to Justice Act), as amended; any claim under the United States Constitution, Tucker Act, 28 U.S.C. § 1491, or at common law, or arising out of or relating to access to, imposition of institutional controls or other restrictions on the use or enjoyment of the Site, or any property owned or controlled by the Settling Defendant adjacent to the Site, or response activities at the Site; or any claim arising out of the release or threatened release of Hazardous Materials into the environment at the Site. Nothing in this Consent Decree shall be deemed to constitute 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 Defendant reserves the right to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the Site only for response costs that are incurred by the Settling Defendant as a result of an action brought pursuant to Paragraphs 32 or 33 (Pre- and Post-Certification Reservations) or Paragraph 35.c (General Reservations), including but not limited to, any direct or

indirect claim for reimbursement from the Hazardous Substance Superfund under CERCLA Section 106(b)(2). Provided, however, that Settling Defendant may not challenge the Record of Decision.

c. Nothing in this Consent Decree shall be deemed to restrict, limit or waive Settling Defendant's right to defend against a future claim of the United States that Settling Defendant has violated the UAO. Provided, however, that the Settling Defendant may not challenge or otherwise contest the terms or validity of the UAO or the Record of Decision.

d. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the direction or approval of the Settling Defendant's plans or activities. The foregoing applies only to claims which 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;

XII. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

39. 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 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.

40. With regard to claims for contribution against Settling Defendant for Past and Future Response Costs, the Parties hereto agree that the Settling Defendant is entitled to such protection from contribution actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

41. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to the Site, it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to the Site, it will notify in writing the United States within 20 days of service of the complaint on it. In addition, Settling Defendant shall notify the United States within 20 days of service or receipt of any Motion for Summary Judgment and

within 20 days of receipt of any order from a court setting a case for trial for matters related to the Site.

42. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant 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 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 X (Covenants Not to Sue by Plaintiff).

XIII. CERTIFICATION OF COMPLETION

43. Within 90 days after Settling Defendant concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by the Settling Defendant and EPA. If, after the pre-certification inspection, the Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Standards have been attained, it shall submit a written report requesting certification to EPA for approval within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendant's Project

Coordinator shall state 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 engineer. The report shall contain the following statement, signed by a responsible corporate official of the Settling Defendant:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is 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 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 Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD. EPA will set forth in the notice a schedule for performance of such activities consistent with Paragraph 11 of the Consent Decree and the UAO SOW. Settling Defendant 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 VIII (Dispute Resolution).

44. If EPA concludes, based on the pre-certification inspection and the initial or any subsequent report requesting Certification of Completion, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to the Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of Section X of this Consent Decree.

XIV. ADMINISTRATIVE ORDER

45. Nothing in this Consent Decree shall alter any obligations Settling Defendant may have to provide access to the Site, institutional controls for the Site, access to information, and for retention of records as set forth in Sections XXI, XXIV and XXV of the UAO.

46. Settling Defendant hereby certifies that it has not knowingly altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site since the issuance of the UAO.

XV. NOTICES AND SUBMISSIONS

47. 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 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. 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, and the Settling Defendant, 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: 90-11-2-551A

As to EPA:

RuthAnn Sherman
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
JFK Federal Building, SES
Boston, MA 02203

Roger Duwart
Regional Project Manager
U.S. Environmental Protection Agency
Office of Site Remediation and Restoration
JFK Federal Building, HBO
Boston, MA 02203

As to Settling Defendant:

Reina M. MacDonald, Esq.
General Counsel
NMB (USA), Inc.
Legal Department
9730 Independence Avenue
Chatsworth, CA 91311-4373

Chris Rawnsley
New Hampshire Ball Bearings, Inc.
Route 202 South
Peterborough, NH 03458

J. Brian Molloy, Esq.
Piper & Marbury, L.L.P.
1200 19th Street, N.W.
Washington, D.C. 20036

XVI. FORCE MAJEURE

48. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant 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.

49. 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 Settling Defendant shall notify orally 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 Office of Site Remediation and Restoration within four days of when Settling Defendant first knew that the event might cause a delay. Within five days thereafter, Settling Defendant shall provide in writing to EPA 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 Settling Defendant's 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 Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant 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 Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known.

50. If EPA 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 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 does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

51. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section VIII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant 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 Settling Defendant complied with the requirements of Paragraphs 48 and 49, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of

the affected obligation of this Consent Decree identified to EPA and the Court.

XVII. RETENTION OF JURISDICTION

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

XVIII. APPENDICES

53. The following appendix is attached to and incorporated into this Consent Decree: "Appendix A" is the description and/or map of the Site.

XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

54. This Consent Decree shall be lodged with the Court for a period of thirty (30) days for public notice and comment. Settling Defendant consents 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 which indicate that this Consent Decree is inappropriate, improper, or inadequate.

55. 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.

XX. SIGNATORIES/SERVICE

56. Settling Defendant and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice each certify 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.

57. Settling Defendant 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 Settling Defendant with respect to all matters arising under or relating to this Consent Decree. Settling Defendant waives any objection to service made by mail to the person so identified.

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. New Hampshire Ball Bearings, Inc., CERCLA # 01-62, DOJ Case No. 90-11-2-551A, relating to the South Municipal Water Well Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: July 17, 1997

Joel M. Gross
 Joel M. Gross
 Section Chief
 Environmental Enforcement Section
 Environment and Natural Resources
 Division
 U.S. Department of Justice
 Washington, D.C. 20530

Date: July 9, 1997

Cynthia S. Huber
 Cynthia S. Huber
 Bar Nos. 03125279 (Il.),
 390616 (D.C.)
 Senior Attorney
 Environmental Enforcement Section
 Environment and Natural Resources
 Division
 U.S. Department of Justice
 P.O. Box 7611
 Ben Franklin Station
 Washington, D.C. 20044
 (202) 514-5273

Paul M. Gagnon
 United States Attorney
 District of New Hampshire

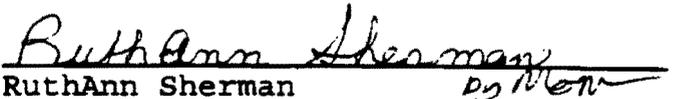
Gretchen L. Witt
 Chief Civil Assistant
 Office of the U.S. Attorney
 District of New Hampshire

Date: 6/6/97



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

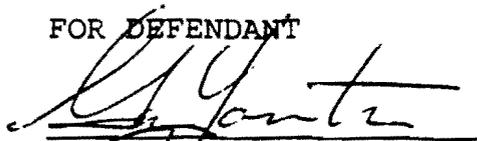
Date: _____



RuthAnn Sherman *by Men*
Senior Enforcement Counsel
U.S. Environmental Protection
Agency
JFK Federal Building, SES
Boston, MA 02203

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. New Hampshire Ball Bearings, Inc., CERCLA # 01-62, DOJ Case No. 90-11-2-551A, relating to the South Municipal Water Well Superfund Site.

FOR DEFENDANT


GARY YONANTAS, PRESIDENT
[Please fill in]

Date: May 27, 1997

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

Name: Michael D. Harvell, Esq.
Title: Secretary
Address: c/o Sheehan, Phinney, Bass + Green
1000 Elm Street
Manchester, NH 01301

**Explanation of Significant Differences
South Municipal Water Supply Well Superfund Site
February 3, 1997**

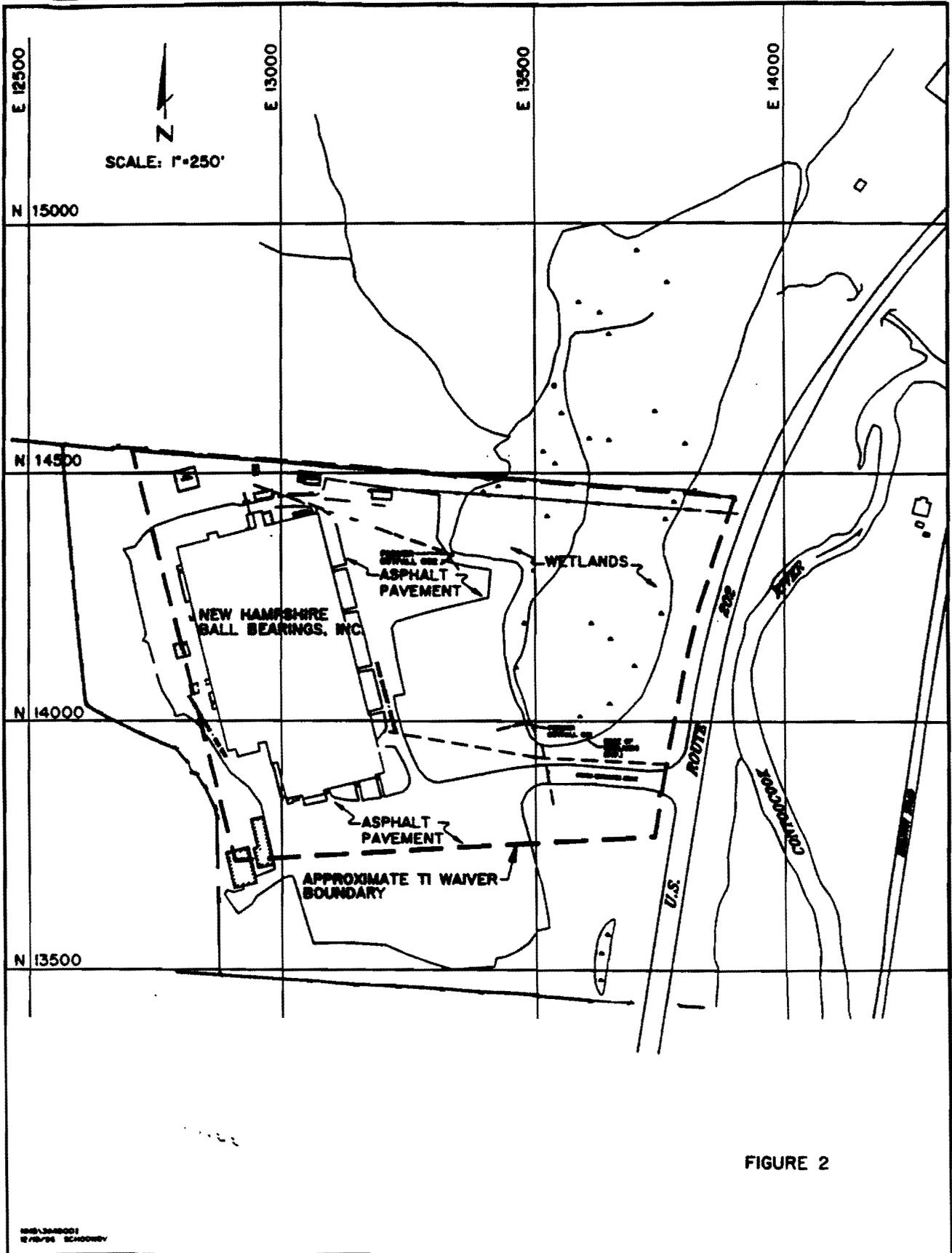


FIGURE 2