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UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

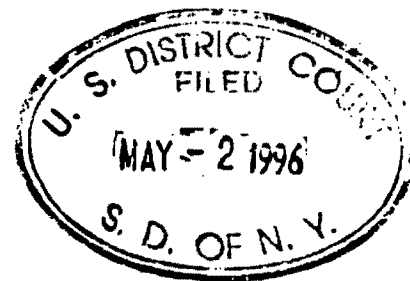
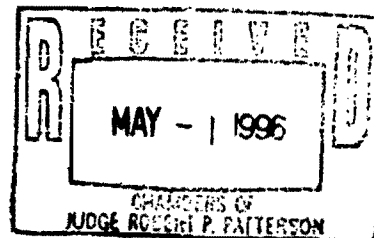
UNITED STATES OF AMERICA,

Plaintiff,

v.

ALLIED-SIGNAL, INC., as successor  
to THE BENDIX COMPANY,  
CELLU-CRAFT INC.,  
CONSOLIDATED EDISON COMPANY OF  
NEW YORK, INC.,  
CONTINENTAL HOLDINGS INC., as  
successor to CONTINENTAL CAN  
COMPANY, INC.,  
CORTESE CONSTRUCTION CORPORATION,  
CUSTOM CHEMICAL COMPANY, INC.,  
E. I. DUPONT DENEMOURS & COMPANY,  
FALSTROM COMPANY,  
FLEXABAR CORPORATION, INC.,  
GANES CHEMICALS, INC.,  
HALOCARBON PRODUCTS CORPORATION,  
HULS AMERICA INC., as successor  
to KAY FRIES CHEMICALS, INC.,  
ICI AMERICAS INC.,  
INMONT CORPORATION,  
INX PRINTING INK CORP., as  
successor to CARLSON INK,  
KEUFFEL & ESSER COMPANY,  
MARISOL, INC.,  
NATIONAL STARCH AND  
CHEMICAL CORPORATION,  
NICHOLAS ENTERPRISES, INC., as  
successor to NICHOLAS  
SANITATION,  
OCCIDENTAL CHEMICAL CORP.,  
THE OKONITE COMPANY,  
PACQUET ONEIDA, INC., as successor  
to ONEIDA PACKAGING PRODUCTS,  
RADIAC RESEARCH CORPORATION,  
RHONE-POULENC INC.,  
R&R SANITATION,  
SCA SERVICES, INC.,  
STEPAN CHEMICAL,  
TOWN OF TUSTEN,

Defendants.



CONSENT DECREE

CIVIL ACTION NO.

96 Civ. 1513 (RPP)

REGIONAL SOLICITOR  
**RECEIVED**

MAR 12 1997

U.S. DEPT. OF THE INTERIOR  
NORTHEAST REGION

FILED  
MAY - 2 1996  
U.S. DISTRICT COURT  
S.D. OF N.Y.

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## CONSENT DECREE

### I. BACKGROUND

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

B. The United States in its complaint seeks, inter alia, the performance of response actions by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"), reimbursement for response costs incurred by DOI, and damages for injury, destruction, and/or loss of natural resources pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New York (the "State") of EPA's negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for 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. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior ("DOI") and the National Oceanographic and Atmospheric Administration of the United States Department of Commerce 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 them to participate in the negotiation of this Consent Decree.

E. Pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, DOI incurred response costs related to releases of hazardous substances from the Site and conducted an assessment of natural resources which were or would likely be injured, lost, or destroyed as a result of releases of hazardous substances and/or the implementation of Remedial Action at the Site.

F. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any fact alleged in the complaint or liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

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 on June 1, 1986 in the Federal Register.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, New York State Department of Environmental Conservation ("NYSDEC") and SCA Services, Inc. ("SCA") entered into a stipulation and order in 1985 to conduct a remedial investigation at the Site.

I. SCA performed activities pursuant to the above-mentioned stipulation and order, and SCA submitted a Phase I report to NYSDEC in July of 1987 and a Phase II report in August of 1988.

J. In April of 1990, NYSDEC formally transferred the lead enforcement role to EPA.

K. In September of 1990, EPA issued an Administrative Order on Consent, Index Number II CERCLA-00217, to SCA for the performance of additional investigative activities which were determined to be necessary to complete the remedial investigation and feasibility study at the Site, including the assessment of potential effects on the Delaware River embayment waters;

L. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the availability of the proposed plan for remedial action on July 29, 1994, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action.

M. The decision by EPA on the remedial action to be implemented at the Site is embodied in a Record of Decision ("ROD"), executed on September 30, 1994. The State of New York has concurred on the remedy selected in the ROD. The ROD includes a responsiveness summary which responds to the significant public comments. Notice of the proposed plan was published in accordance with Section 117(b) of CERCLA.

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

O. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected in the ROD and the Work to be performed by Settling Defendants shall constitute a response action taken or ordered by the President.

P. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, and implementation of this Consent Decree will expedite the cleanup and restoration, replacement, or acquisition of equivalent natural resources as those injured or destroyed at the Site and will avoid prolonged and complicated litigation between the Parties, and this Consent Decree is fair, reasonable, and in the public interest.

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

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

### III. PARTIES BOUND

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

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work, and Settling Defendants shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).



#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

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

"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. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday.

"DOI" shall mean the United States Department of the Interior or any successor department or agency of the United States.

"EPA" shall mean the United States Environmental Protection Agency or any successor department or agency of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, VIII, X (including, but not limited to, attorneys fees and the amount of just compensation), XVI, and Paragraph 83 of Section XXII. Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site after the lodging of the Consent Decree.

"FWS" shall mean the United States Fish and Wildlife Service.

"Institutional Controls" shall mean deed restrictions and other requirements and controls, enforceable by the United States, the State, and all Settling Defendants, developed for one or more of the following reasons: to restrict the use or hydrologic alteration at the Site prior to the attainment of Performance Standards, to limit human and environmental exposure to hazardous substances, to ensure non-interference with the performance of the Work, to ensure the integrity and effectiveness of the Work.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,

codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"NPS" shall mean the National Park Service.

"Natural Resource Damages" shall mean damages, including costs of damages assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all natural resources at the Site.

"Natural Resources" shall have the meaning as set forth in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

"NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

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

"Owner Settling Defendants" shall mean the Settling Defendant the Town of Tusten.

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

"Parties" shall mean the United States and Settling Defendants.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in the ROD or in the SOW. The

Parties acknowledge that Settling Defendants may petition to waive Performance Standards as set forth in Sections XI and XII of the SOW.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6991 (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 30, 1994, by the Regional Administrator, EPA Region II, and all attachments thereto.

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

"Remedial Action Work Plan" shall mean those documents submitted by Settling Defendants pursuant to Paragraph 12.a of this Consent Decree and described more fully in Paragraph 12.b.

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

"Remedial Design Work Plan" shall mean the document submitted by Settling Defendants pursuant to Paragraph 11.a of this Consent Decree and described more fully in Paragraph 11.b.

"Remedial Work Element" shall mean one of two phases of the selected remedy, the first including the drum removal and landfill cap element of the Remedial Action, and the second including the ground-water extraction/treatment element of the selected remedy.

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

"Settling Defendants" shall mean those defendants identified in the Caption to this Decree.

"Site" shall mean the Cortese Landfill Superfund Site, located in the Town of Tusten, Sullivan County, New York, including the Cortese Landfill which encompasses approximately 5.25 acres, depicted generally on the map attached as Appendix C.

"State" shall mean the State of New York.

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

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

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); and (2)

any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

#### V. GENERAL PROVISIONS

##### 5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by Settling Defendants, to reimburse past response costs of DOI, to restore, replace, or acquire the equivalent of natural resources injured by releases of hazardous substances and/or the implementation of the remedy at the Site, and to reimburse response costs of the Plaintiff.

##### 6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling

Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law

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

8. Permits

a. As provided in Section 121(e) of CERCLA and Sections 300.5 and 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site, including those areas in close proximity to the contamination necessary for implementation of the Work. Where any portion of the Work requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a

failure to obtain, or a delay in obtaining, any permit required for the Work.

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

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Owner Settling Defendants shall record a certified copy of this Consent Decree with the Registry of Deeds in Sullivan County, in the State of New York. Thereafter, each deed, title, or other instrument conveying an interest in any of the Owner Settling Defendants' property located at the Site shall contain a notice of this Consent Decree and shall reference the recorded location of the Consent Decree.

b. Any Owner Settling Defendants, and any person that subsequently acquires any interest in an Owner Settling Defendant's property at the Site (either from an Owner Settling Defendant or a successor-in-title) 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 New York, 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 part of the agreement to purchase or otherwise obtain the property, that it will comply with the obligations of an Owner Settling Defendant to provide access and



institutional controls, as set forth in Section X (Access and Institutional Controls) of this Consent Decree, with respect to such property.

c. In the event that an Owner Settling Defendant sells or otherwise transfers any interest in its property located at the Site, the Owner Settling Defendant's obligations under this Consent Decree, including without limitation its obligation to provide or secure access and maintain institutional controls pursuant to Section X (Access and Institutional Controls), shall continue to be met by the Owner Settling Defendant. In addition, if the United States and the State approve, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes or is a portion of the Site release or otherwise affect the obligations of an Owner Settling Defendant to comply with the Consent Decree.

#### VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

##### 10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Additional Response Actions), VIII (EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of a qualified contractor (hereinafter, the "Supervising Contractor"), the selection of which shall be subject to disapproval by EPA. Within 10 days after the lodging

of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors (which does not include the contractor previously disapproved by EPA), including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the approved contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendants from meeting one or more deadlines in a plan approved by EPA pursuant

to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) hereof.

11. Remedial Design.

a. Within 60 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon its approval by EPA, shall be incorporated into and become enforceable under this Consent Decree.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of the following: (1) a Sampling, Analysis, and Monitoring Plan, (2) a Quality Assurance Project Plan, (3) a Health and Safety Plan for field design activities; (4) a Description of Additional RD Tasks; (5) Plan for Obtaining Access and Other Approvals; and (6) a RD Schedule for the completion of the Remedial Action Work Plan and a Draft Schedule for Remedial Construction and O&M.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, including the Health and Safety Plan for all field activities, Settling Defendants shall implement the Remedial Design Work Plan. Settling Defendants shall submit to EPA and

the State all plans, submittals, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design requirements shall be performed as set forth in Section VII of the SOW.

e. Any value engineering proposals must be identified and evaluated during this review.

f. Any pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

## 12. Remedial Action.

a. Within 60 days after the approval of the final design submittal for each Remedial Work Element, Settling Defendants shall award a contract for that Remedial Work Element. The final

design submittal for Remedial Work Element II shall be completed within twenty-four (24) months of EPA's determination that construction is complete for Remedial Work Element I

b. Within 60 days after the award of the Remedial Action Contract for each Remedial Work Element, Settling Defendants shall submit to EPA and the State a work plan for the performance of the Remedial Action for that Remedial Work Element ("Remedial Action Work Plan"). Each Remedial Action Work Plan shall provide for construction of the relevant Remedial Work Element of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by EPA, each Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit each Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by each Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

c. Each Remedial Action Work Plan shall include the following: (1) a "Request for Modification of Approved Final Remedial Design Report", if applicable, and a Site Management Plan, as set forth in the SOW.

d. Upon approval of each Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities

required under each Remedial Action Work Plan. Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under each approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence physical on-site activities at the Site, including physical on-site activities relating to any Remedial Work Element, prior to approval of the Remedial Action Work Plan which relates to that Remedial Work Element.

13. The Work performed by Settling Defendants pursuant to this Consent Decree shall include achievement of the Performance Standards.

14. The Parties acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the EPA-approved Work Plans will achieve the Performance Standards. Settling Defendants' compliance with the work requirements shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

15. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste

management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

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

b. The identity of the receiving facility and state will be determined by Settling Defendants following the award of the contract for Remedial Action construction. Settling Defendants shall provide the information required by Paragraph 15.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

## VII. ADDITIONAL RESPONSE ACTIONS

16. In the event that EPA determines or Settling Defendants propose that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided to the Project Coordinator for the other party(ies).

17. Within 45 days of receipt of notice from EPA pursuant to Paragraph 16 that additional response actions are necessary (or such longer time as may be specified by EPA), Settling Defendants shall submit for approval by EPA, after reasonable opportunity for review and comment by the State, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 11 and 12. Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval), Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein.

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



19. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Paragraphs 63-66 of this Consent Decree.

#### VIII. EPA PERIODIC REVIEW

20. Settling Defendants shall conduct any studies and investigations requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations. Disputes as to studies and investigations requested by EPA pursuant to this Section shall be resolved through the procedures set forth in Section XX (Dispute Resolution).

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

22. If the Regional Administrator, EPA Region II, or his/her delegate determines that information received during the review conducted pursuant to Section 121(c) of CERCLA indicates that the

Remedial Action is not protective of human health and the environment, in whole or in part, Settling Defendants shall undertake any further response actions EPA has determined are appropriate unless their liability for such further response actions is barred by the Covenant Not to Sue set forth in Section XXII. Settling Defendants shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) whether EPA's determination that the remedial action is not protective of human health and the environment is arbitrary and capricious or otherwise not in accordance with law, (2) whether EPA's selection of the further response actions is arbitrary and capricious or otherwise not in accordance with law, or (3) whether EPA's determination that Settling Defendants are required to perform the further response actions fall within the reservations in Paragraphs 79, 80 or 83 or are otherwise not barred by the Covenant Not to Sue set forth in Section XXII.

#### IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

23. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures in the analysis of all samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80), as revised; "Data Quality Objective

Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984 (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the

"Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Consent Decree, or any other method approved by EPA. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

24. Upon request, Settling Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA will allow Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of Settling Defendants' implementation of the Work.

25. Settling Defendants shall submit to EPA the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree in the first monthly progress report, as set forth in Paragraph 31, below, submitted after the date when those results or data become available to Settling Defendants, unless EPA agrees otherwise.

26. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and

inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS AND INSTITUTIONAL CONTROLS

27. Commencing upon the date of lodging of this Consent Decree, Settling Defendants agree to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing the Work or additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV; and
- g. Assessing Settling Defendants' compliance with the provisions of this Consent Decree.

If EPA determines, in its sole discretion, that the access rights that Settling Defendants are required to provide pursuant to this Paragraph should run with the land with respect to all or part of the property, Settling Defendants shall also secure deed restrictions so that the access rights, enforceable by the United States, the State, and the Settling Defendants, run with the land with respect to such property.

28. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. If EPA determines, in its sole discretion, that the access rights that the Settling Defendants are required to secure pursuant to this Paragraph should run with the land with respect to all or part of the property, the Settling Defendants shall also use best efforts to secure deed restrictions so that the access rights, enforceable by the United States, State, and the Settling Defendants, run with the land with respect to such property. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies

Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States and include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States, in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access.

29. a. To the extent that the Site or any other property for which Institutional Controls are required for the implementation of this Consent Decree is owned or controlled by the Settling Defendants, the Settling Defendants shall implement those Institutional Controls specified in the SOW according to the schedule provided in the SOW, and shall also secure any additional Institutional Controls, as required by EPA, during the conduct of the Remedial Action.

b. To the extent that the Site or any other property for which Institutional Controls are required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, the Settling Defendants shall use "best efforts" to secure from such persons Institutional Controls, as specified in the SOW. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of Institutional Controls. If any

Institutional Controls required to complete the Work are not obtained within the schedule established pursuant to the SOW or within 45 days of the date EPA notifies the Settling Defendants in writing that additional Institutional Controls beyond those previously secured are necessary, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain Institutional Controls. The United States or the State may, as they deem appropriate, assist Settling Defendants in obtaining Institutional Controls. Settling Defendants shall reimburse the United States or the State, in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States or the State in obtaining Institutional Controls, including, but not limited to, attorneys fees and the amount of just compensation.

c. Settling Defendants shall not use any portion of the Site in any manner that EPA determines would adversely affect the integrity of any containment system, treatment system or monitoring system installed pursuant to this Consent Decree. A Settling Defendant shall have the opportunity to submit a report in order to demonstrate that an intended use would not have any adverse impact on, or otherwise adversely affect, any containment system, treatment system, or monitoring system installed pursuant to this Consent Decree. Any dispute under this Subparagraph shall be subject to Section XX (Dispute Resolution).



30. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

#### XI. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts, and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by

EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendants pursuant to Paragraph 49.b of Section XV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide expanded results with supporting documentation of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month, as well as provide briefings for EPA to discuss the progress of the Work.

32. Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than 7 days prior to the performance of the activity.

33. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is

available, the Response and Prevention Branch of the Emergency and Remedial Response Division, EPA Region II. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within 20 days of the onset of an event described in the preceding paragraph, Settling Defendants shall furnish EPA with a written report, signed by the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

35. Settling Defendants shall submit all plans, reports, and data required by Section VI, above, the SOW, the EPA-approved Remedial Design Work Plan, the EPA-approved Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in Section VI, above, and such approved plans. Settling Defendants shall simultaneously submit copies of all such plans, reports, and data to the State, in accordance with the requirements of Section XXVII, below.

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

## XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

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

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the first submittal of a given plan, report or other item (as opposed to a resubmittal of a given item) to cure the deficiencies pursuant to Paragraph 37(c) and that initial submittal has a material defect, EPA retains its right to seek stipulated penalties for that deficient submittal, pursuant to Section XXI.

39. a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall, subject only to their right to invoke the procedures set forth in Section XX (Dispute

Resolution), correct the deficiencies and resubmit the plan, report, or other item for approval within 25 days or such other time as specified by EPA in such notice. Any stipulated penalties applicable to the submission pursuant to Section XXI shall accrue during the 25 day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or unilaterally modified by EPA as provided in Paragraph 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

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

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA, Settling Defendants shall be

deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendants invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, or if Settling Defendants do not challenge EPA's disapproval or modification by invoking the dispute resolution procedures set forth in Section XX, stipulated penalties shall accrue for such violation pursuant to Section XXI from the date on which the initial submission was originally required.

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

#### XIII. PROJECT COORDINATORS

43. Within 20 days of lodging this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a

Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least 7 days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Defendants' Project Coordinator shall not be an attorney for any of Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. Plaintiff may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency

situation or may present an immediate threat to public health or welfare or the environment as a result of a release or threatened release of Waste Material.

45. Settling Defendants' Project Coordinator shall be available to meet with EPA at EPA's request.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

46. Within 30 days of lodging of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$7,000,000 in one of the following forms:

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

47. If Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 46(c) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph



46(c) or (d), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Section. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

#### XV. CERTIFICATION OF COMPLETION

##### 48. Completion of the Remedial Action

a. Within 90 days after Settling Defendants conclude that all Remedial Action has been fully performed (including Remedial Work Elements I and II and any required additional response actions) and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, Settling Defendants still believe that all Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer

and the Settling Defendants' Project Coordinator shall state that all 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 a Settling Defendant or the Settling Defendants' Project Coordinator:

"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, after reasonable opportunity for review and comment by the State, determines that all 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 Defendants in writing of the activities that must be undertaken to complete all Remedial Action or achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the

dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that all Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of all Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of all Remedial Action shall not affect Settling Defendants' obligations under his Consent Decree.

49. Completion of the Work

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

responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

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

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

**XVI. EMERGENCY RESPONSE**

50. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendants shall notify the Response and Prevention Branch of the Emergency and Remedial Response Division, EPA Region II. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

51. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to

seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. PAYMENT OF MONIES TO THE UNITED STATES

52. a. DOI Past Response Costs

Within 30 days of the entry of this Consent Decree by the Court, the Settling Defendants shall pay DOI \$134,068 as reimbursement for past response costs which were incurred by the NPS pursuant to Section 107 of CERCLA. The payment shall be made in accordance with instructions that the United States Attorney's Office will provide to the Settling Defendants (in accordance with paragraph 98. c.) within 10 days of the entry of this Consent Decree by the Court concerning the form of payment (wire transfer or certified or bank check), identity of payee, manner of delivery, and addressee.

b. Payment of Natural Resource Damages

Within 30 days of the entry of this Consent Decree by the Court, Settling Defendants shall pay DOI, in its capacity as natural resource trustee, \$84,850.00. The payment shall be made in accordance with instructions that the United States Attorney's Office will provide to the Settling Defendants (in accordance with paragraph 98. c.) within 10 days of the entry of this Consent Decree by the Court concerning the form of payment (wire transfer or certified or bank check), identity of payee, manner of delivery, and addressee.

c. Copies of the checks and transmittal letters required in subparagraphs a. and b. of this paragraph shall be sent to the following:

1. Shawn Norton  
National Park Service  
800 N. Capitol Street, Suite 580  
Washington, D.C. 20002
2. Sherry Morgan, Field Supervisor  
Cortland Field Office  
U.S. Fish and Wildlife Service  
3817 Luker Road  
Cortland, NY 13045
3. Marcia F. Gittes  
U.S. Department of Interior  
Office of the Northeast Regional Solicitor  
One Gateway Center - Suite 612  
Newton Corner, MA 02158
4. Andrew L. Raddant  
Regional Environmental Officer  
Office of Environmental Policy and Compliance  
U.S. Department of Interior  
408 Atlantic Avenue - Room 142  
Boston, MA 02210
5. Section Chief  
Environmental Enforcement Section  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
Case No: 90-11-2-1078
6. Chief, Environmental Protection Unit  
United States Attorney  
Southern District of New York  
100 Church Street, 19th Floor  
New York, NY 10007

53. Future Response Costs

Settling Defendants shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States will periodically send Settling Defendants billings for

such costs. Those billings will be accompanied by a printout of cost data in EPA's financial management system and by a calculation of EPA's indirect costs. Settling Defendants shall make all payments within 30 days of the date of the receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. Settling Defendants shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing U.S.A.O. file number 9403926, the EPA Region and Site/Spill ID # 02X9, and DOJ Case Number 90-11-2-1078. Settling Defendants shall forward the certified check(s) to:

EPA - Region 2  
Attention: Superfund Accounting  
P.O. Box 360188M  
Pittsburgh, Pennsylvania 15251

and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions).

54. Settling Defendants may contest payment of any Future Response Costs under Paragraph 53 if they determine that the United States has made a mathematical error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of the date of the receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Defendants shall within the 30 day period pay all uncontested Future



Response Costs to the United States in the manner described in Paragraph 53. Simultaneously, Settling Defendants shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, Settling Defendants shall pay the sums due, with accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 53 within 5 days of the resolution of the dispute. If Settling Defendants prevail concerning any aspect of the contested costs, Settling Defendants shall pay that portion of the costs for which they did not prevail, plus associated accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner

described in Paragraph 53; any balance of the escrow account shall be disbursed to Settling Defendants. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

55. In the event that the payments required by Paragraph 53 are not made within 30 days of the date of the receipt of each bill, Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest on Future Response Costs shall begin to accrue on the date of the receipt of each bill sent to Settling Defendants pursuant to paragraph 53, above. Interest shall accrue at the rate specified through the date of Settling Defendants' payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section.

#### XVIII. INDEMNIFICATION AND INSURANCE

56. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or

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

57. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance

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

58. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of all Remedial Action pursuant to Paragraph 48.b. of Section XV (Certification of Completion) comprehensive general liability insurance and automobile insurance with limits of five million dollars for comprehensive general liability insurance and two million dollars for automobile insurance, combined single limit naming as additional insured the United States. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each

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

#### XIX. FORCE MAJEURE

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

60. 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, Settling Defendants 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 Chief of the New York/Caribbean Superfund Branch I, Emergency and Remedial Response Division, EPA Region II, within 48 hours of when Settling Defendants first knew or should have known that the event might cause a delay. Within 5 days thereafter, Settling Defendants 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, Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim, and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of any circumstance of

which their contractors or subcontractors had or should have had notice.

61. 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 Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

62. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice under the preceding paragraph. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that

best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 59 and 60, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XX. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

64. 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 receives a written Notice of Dispute from another Party.

65. 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 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States 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 Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under paragraph 66 or 66.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position will include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 66 and 67.

66. 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. 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; (2) the adequacy of the response actions performed pursuant to this Consent Decree; and (3) the appropriateness of additional response actions required pursuant to Section VII of this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the ROD.

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 Paragraph and Paragraph 65. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Emergency and Remedial Response Division ("ERRD"), EPA Region II, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 66.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 66.b. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the ERRD Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraphs 66.a.

67. 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. Contemporaneously with or following the submission of EPA's Statement of Position pursuant to Paragraph 65, the ERRD Director, EPA Region II, will issue a final decision resolving the dispute. The ERRD Director's decision shall be binding on

Settling Defendants unless, within 10 days of receipt of the decision, Settling Defendants file with the Court and serve on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

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

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree not directly in dispute, unless EPA agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 75. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be paid as provided in Section XXI (Stipulated Penalties).

# XXI. STIPULATED PENALTIES

69. Settling Defendants shall be liable for stipulated penalties in the amounts set forth below to the United States for failure to comply with any requirements of this Consent Decree, unless excused under Section XIX (Force Majeure).

"Compliance" by Settling Defendants shall include performance and completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,000	1st through 14th day
\$ 4,000	15th through 30th day
\$ 8,000	31st day and beyond

70. In the event that EPA assumes performance of the remainder of the Work, any Remedial Work Element, or any additional response action pursuant to Paragraph 84 of Section XXII (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable for a stipulated penalty in the amount of \$250,000.

71. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However,

stipulated penalties shall not accrue (1) with respect to a deficient submission under Section XII (Submissions Requiring Agency Approval) during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency, (2) with respect to a decision by the Director of the Waste Management Division, EPA Region II, under Paragraph 66.b. or 67.a. of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XX (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.

72. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification and a description of such noncompliance. EPA may send Settling Defendants 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 Settling Defendants of a violation.

73. All penalties owed to the United States under this section shall be due and payable within 30 days of the date of EPA's demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

EPA - Region II  
Attention: Superfund Accounting  
P.O. Box 30188M  
Pittsburgh, Pennsylvania 15251

The Payment shall reference the U.S.A.O. file number 9403926, the EPA Region and Site/Spill ID # 02X9, and DOJ Case Number 90-11-2-1078. Copies of any check paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

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

75. Penalties shall continue to accrue as provided in Paragraph 70 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 (a) the agreement or (b) the date of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole, Settling Defendants shall pay all accrued penalties owed to EPA within 60 days of the date of the Court's decision or order, except as provided in Subparagraph c below. If the dispute is appealed to this Court and the United States prevails only in part, Settling Defendants shall pay all accrued penalties determined by this Court to be owing to the United States, 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 Settling Defendants, Settling Defendants shall pay all accrued penalties owing to the United States into an interest-bearing escrow account within 60 days of the date of the District 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 the date of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

76. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph



73 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

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 Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 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 provided herein, except in the case of a willful violation of the Consent Decree.

77. No payments made under this Section shall be tax deductible for Federal tax purposes.

#### XXII. COVENANTS NOT TO SUE BY PLAINTIFF

78. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 79, 80, and 83 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the timely submittal of the Remedial Design Work Plan. Except with respect to future liability, DOI's covenant not to sue shall take effect upon DOI's receipt of the payments required pursuant to

Section XVII. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of all Remedial Action by EPA pursuant to Paragraph 48.b of Section XV (Certification of Completion). 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 Settling Defendants and do not extend to any other person.

79. 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 all Remedial Action as set forth in Paragraph 48, above:

- (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 these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

80. 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 all Remedial Action as set forth in Paragraph 48, above:

- (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 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.

81. For purposes of Paragraph 79, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 80, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any

information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of all Remedial Action.

82. Notwithstanding any other provision of this Consent Decree, the United States, on behalf of its natural resource trustees, reserves 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 United States at the date of the lodging of this Consent 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 after the date of lodging of this Consent Decree which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to the United States at the date of lodging of this Consent Decree.

83. 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 78. The United States reserves, 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:

- (1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) criminal liability;

(4) liability for violations of federal or state law which occur during or after implementation of the Remedial Action, and

(5) liability for costs that the United States has incurred or will incur related to the Site but which are not within the definition of Future Response Costs.

84. In the event EPA determines that Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that Settling Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVII (Reimbursement of Response Costs).

85. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

**XXIII. COVENANTS BY SETTLING DEFENDANTS**

86. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against 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) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency, or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, any claim under the fifth amendment of the United States Constitution for "takings" or any other matter, any claim under the Tucker Act, 28 U.S.C. § 1491, or at common law, arising out of or relating to access to, institutional controls on, or response activities undertaken at the Site, any claims arising out of response activities at the Site including any claims against the United States' contractors based on activities occurring prior to the lodging of this Consent Decree. However, Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on any future negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendants plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to

constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

87. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

88. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that Settling Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

89. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify the United States in writing no later than 30 days prior to the initiation of such suit or claim.

90. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States 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. Each Settling Defendant also reserves whatever rights it may have as against the other Settling Defendants consistent with the executed settlement agreements between Settling Defendant SCA Services, Inc. and the other Settling Defendants as modified in the PRP Group Organization Agreement, dated February 11, 1994.

91. 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 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 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 XXII (Covenants Not to Sue by Plaintiff).



XXV. ACCESS TO INFORMATION

92. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work available to EPA, for purposes of investigation, information gathering, or testimony.

93. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff 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 afforded 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, 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. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff 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 contents of the document, record, or information, and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

94. 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.

#### XXVI. RETENTION OF RECORDS

95. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b of Section XV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or

control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b of Section XV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

96. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other

information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

97. Each Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

#### XXVII. NOTICES AND SUBMISSIONS

98. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided herein. 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 Settling Defendants, respectively.

a. As to the United States or EPA:

3 copies: Chief, New York/Caribbean Superfund Branch II  
Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 20th Floor  
New York, NY 10007-1866

Attention: Cortese Landfill Superfund Site  
Remedial Project Manager

One copy of all required written communications other than work plans, design documents and technical reports shall also be sent to each of the following individuals:

Chief, New York/Caribbean Superfund Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region II  
290 Broadway, 17th Floor  
New York, NY 10007-1866

Attention: Cortese Landfill Superfund Site Attorney

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: DOJ # 90-11-2-1078

Chief, Environmental Protection Unit  
United States Attorney  
Southern District of New York  
100 Church Street, 19th Floor  
New York, NY 10007

Re: USAO 9403926

b. As to the State:

When submitting to EPA any written communication required hereunder, Settling Defendants shall simultaneously submit two copies of that communication (unless the given document is a plan or report, in which case seven copies shall be submitted) to:

Director, Division of Hazardous Waste Remediation  
New York State Department of Environmental  
Conservation

Room 222  
50 Wolf Road  
Albany, NY 12233-7010

Attention: Cortese Landfill Site Manager

c. As to the Settling Defendants:

Michael J. Brennan, Esq.  
Group Environmental Counsel  
Waste Management of North America  
580 Edgewater Drive  
Wakefield, MA 01880

Stephen Joyce  
Project Manager  
Waste Management of North America  
580 Edgewater Drive  
Wakefield, MA 01880

XXVIII. EFFECTIVE DATE

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

XXIX. RETENTION OF JURISDICTION

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

### XXX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

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

### XXXI. COMMUNITY RELATIONS

102. Settling Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

### XXXII. MODIFICATION

103. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and Settling Defendants. All such modifications shall be made in writing.

104. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States

will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA and Settling Defendants, after providing the State with a reasonable opportunity to review and comment on the proposed modification.

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

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

106. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C.

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

107. If for any reason the 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.



XXXIV. SIGNATORIES/SERVICE

108. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully and legally authorized to enter into the terms and conditions of this Consent Decree and to execute and bind such party to this document. :

109. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

110. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Allied Signal, Inc., et al, relating to the Cortese Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date:

Jan. 19, 1996

Lois J. Schiffer / 89  
 LOIS J. SCHIFFER  
 Assistant Attorney General  
 Environment and Natural Resources  
 Division  
 U.S. Department of Justice  
 Washington, D.C. 20530

for Gregory M. Jaffe  
 GREGORY M. JAFFE  
 Environmental Enforcement Section  
 Environment and Natural Resources  
 Division  
 U.S. Department of Justice  
 Washington, D.C. 20530

MARY JO WHITE  
 United States Attorney  
 Southern District of New York

Date: 1/21/96

BY:

Beth E. Goldman  
 BETH E. GOLDMAN (BG-6247)  
 Assistant United States Attorney  
 Office of the U.S. Attorney  
 Southern District of New York  
 100 Church Street, 19th Floor  
 New York, New York 10007  
 tel. (212) 385-6225

Date:


9/27/95

Will J. Fox  
 JEANNE M. FOX  
 Regional Administrator, Region 2  
 U.S. Environmental Protection  
 Agency  
 290 Broadway  
 New York, New York 10007-1866

DATED: May 1, 1996

New York, New York

SO ORDERED:

  
United States District Judge

81

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR AlliedSignal Inc. successor to the Bendix Corporation

Date:

September 22, 1995  
Kenneth E. Stroup, Jr.

Assistant General Counsel, Environmental  
101 Columbia Road  
Morristown, NJ 07962

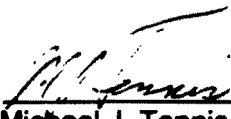
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type]  
Title: CT Corporation System  
Address: 820 Bear Tavern Road, 3rd Flr., West Trenton, NJ 08628  
Tel. Number: (609) 538-1818

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc. , relating to the Cortese Landfill Superfund Site.

FOR INX Printing Ink Corp., formerly known as Roberts & Carlson, Inc. (Carlson Ink).

Date: 9/21/95

 (signature)  
Michael J. Tennis  
Vice President and Secretary

651 Bonnie Lane  
Elk Grove Village, IL 60007

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

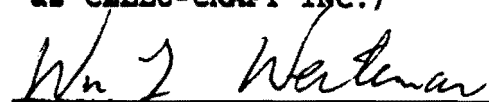
Name: Michael J. Tennis  
Title: Vice President and Secretary  
  
Address: 651 Bonnie Lane  
Elk Grove Village, IL 60007  
  
Tel. Number: 708-981-9399

81

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR X CRAFT INC. (sued herein  
as CELLU-CRAFT INC.)

Dated: September 19, 1995

  
\_\_\_\_\_  
William L. Westerman  
President  
X Craft Inc. (sued herein as  
Cellu-Craft Inc.)  
1403 Fourth Avenue  
New Hyde Park, NY 11040


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

Name: Kenneth David Burrows  
Title: Attorney  
Address: 425 Park Avenue, Suite 2600  
New York, New York 10022  
Tel. Number: (212) 980-6922

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

CONSOLIDATED EDISON COMPANY OF  
FOR NEW YORK, INC.

Date: September 14, 1995

  
[Name -- M. Peter Lanahan  
[Title -- Vice Pres.-Environmental Affairs  
[Address -- Con Edison  
4 Irving Place  
New York, NY 10003

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

Name: Michael A. Wilcken  
Title: Senior Attorney  
Address: Con Edison, 4 Irving Place, New York, NY 10003  
Tel. Number: (212) 460-3241

81

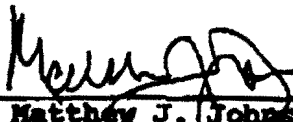
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

For CONTINENTAL CAN COMPANY, INC.

Date: September 18, 1995

CONTINENTAL HOLDINGS INC.

By:

  
Matthew J. Johnson,  
Vice President  
1000 Kiewit Plaza  
Omaha, Nebraska 68131

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

Michael F. Norton  
Attorney  
1000 Kiewit Plaza  
Omaha, Nebraska 68131



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

*CORTESI CONSTRUCTION CORPORATION*  
FOR \_\_\_\_\_ COMPANY, INC.

Date: 9/14/95

*John Cortese*  
[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]

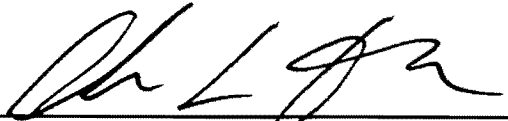
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] John Cortese  
Title: President  
Address: RR 1, Box 1709, Beach Lake, PA 18405  
Tel. Number: 717-729-8241

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR CUSTOM CHEMICAL COMPANY, INC.

Dated: 9/18/95

  
\_\_\_\_\_  
CHARLES LEE THOMASON  
Attorney for Custom Chemicals  
Thomason & Moser  
The Galleria - 2nd Floor  
2-40 Bridge Avenue  
P.O. Box 8160  
Red Bank, NJ 07701  
(908) 530-9404

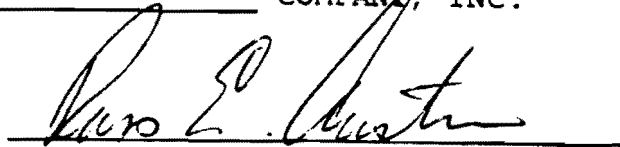
Agent Authorized to Accept Service on Behalf of the Above-Signed Party:

Name: Charles Lee Thomason  
Title: Attorney for Custom Chemicals  
Address: The Galleria - 2nd Floor  
2-40 Bridge Avenue  
P.O. Box 8160  
Red Bank, NJ 07701  
(908) 530-9404

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

E. I. du Pont  
FOR de Nemours and COMPANY, INC.

Date: September 13, 1995



Ross E. Austin, Esq.  
Senior Counsel  
DuPont Legal, D8068  
1007 Market Street  
Wilmington, DE 19898

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

Barbara U. Gravely  
Corporate Legal Assistant  
DuPont Legal, D8068  
1007 Market Street  
Wilmington, DE 19898  
Telephone: (302) 774-4201  
Facsimile: (302) 774-1189

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR Falstrom COMPANY, INC.

Date: September 7, 1995

118 Falstrom Court  
 Passaic, New Jersey 07055  
Francis J. Vucci, Vice President  
 [Name -- Please Type]  
 [Title -- Please Type]  
 [Address -- Please Type]

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

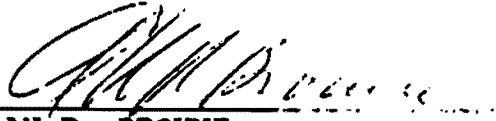
Name: [Please Type] Francis J. Vucci  
 Title: Vice President  
 Address: 118 Falstrom Court, Passaic, New Jersey  
 Tel. Number: (201) 777-0013 07055

81.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

For Flexabar Corporation, Inc.

Dated: September 19, 1995

  
ALLAN P. BROWNE  
Attorney for Flexabar Corporation  
Breitenstein & Browne P.A.  
235 Closter Dock Road  
Closter, New Jersey

Agent authorized to Accept Service on Behalf of Above-signed Party.

1. For all initial process:

Name: Richard G. Guglielmo  
Title: President  
Address: 1969 Rutgers University Blvd.  
Lakewood, New Jersey 08701  
Tel# 1-908-901-6500  
Fax# 1-908-901-6504

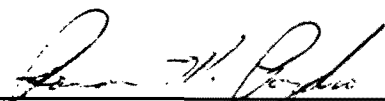
2. For service of documents with regard to the previous litigation with SCA Services, Inc., regarding the Cortese Landfill Site or with regard to the Consent Decree in the matter of the United States of America v. Allied Signal et al.:

Name: Allan P. Browne, Esq.  
Title: Attorney for Flexabar Corporation  
Address: Breitenstein & Browne, P.A.  
235 Closter Dock Road  
Closter, New Jersey 07624  
Tel# 1-201-767-0556  
Fax# 1-201-767-4629

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR Ganes Chemicals COMPANY, INC.

Date: September 12, 1995

  
[Name -- Please Type] Roman M. Pazdro  
[Title -- Please Type] Manager of Environmental Affairs  
[Address -- Please Type]  
Ganes Chemicals Inc.  
630 Broad Street  
Carlstadt, NJ 07072

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

Name: [Please Type]  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Tel. Number: \_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

Halocarbon Products  
FOR Corporation COMPANY,--INC--

Date: 9/1/95

*Louis L. Ferstandig*

[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]

Louis L. Ferstandig

V.P. & Tech. Dir.

887 Kinderkamack Rd.  
River Edge, NJ 07661

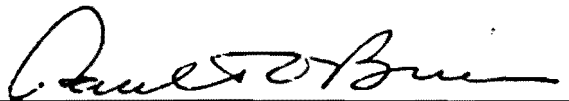
Agent Authorized to Accept Service on Behalf of Above-signed  
Party:

Name: [Please Type]  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Tel. Number: \_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

HULS AMERICA INC.  
For Named Defendant, Kay-Fries Chemicals, Inc.  
~~FOR \_\_\_\_\_ COMPANY, INC.~~

Date: August 28, 1995



[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]

Paul T. O'Brien

Executive Vice President

HULS AMERICA INC., 80 Centennial Avenue,

P. O. Box 456, Piscataway, NJ 08855-0456

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

Name: [Please Type] Paul T. O'Brien

Title: Executive Vice President

Address: 80 Centennial Ave., P.O. Box 456, Piscataway, NJ

Tel. Number: 908/980-6870


08855-0456



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR ICI AMERICAS INC.

Date: 9/11/95

  
Samuel E. Malovrh  
Director, Environmental Remediation  
ICI Americas Inc.  
Concord Plaza  
3411 Silverside Road  
Wilmington, DE 19850

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

Michael J. Brennan, Esquire  
Group Environmental Counsel  
Waste Management of North America  
580 Edgewater Drive  
Wakefield, MA 01880  
(617) 246-6019

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR INMONT CORPORATION  
(NOW KNOWN AS "BASF CORPORATION")

Date: SEPTEMBER 21, 1995



Leslie Carothers  
Attorney-in-fact  
c/o United Technologies Corporation  
One Financial Plaza  
Hartford, CT 06101

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

Name: UTC c/o CT Corporation Systems  
Title: \_\_\_\_\_  
Address: 1633 Broadway, New York, New York 10019  
Tel. Number: (212) 664-1666

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR Keuffel & Esser COMPANY, INC.

Gerard Shanley

Sr. Vice President

Date: 9/14/95

P.O. Box 290 Johnson City, NY 13790

Signed:

Gerard Shanley

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

Name: Herbert R. Bennett, Esq  
Bennett & Yoskin

Address: 229 Nassau St. Princeton, NJ 08542

Tel. Number: 609-279-0900

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR MARISOL, COMPANY, INC.

Date: SEPTEMBER 1, 1995

*H. Peter Nerger*

[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]

H. PETER NERGER, PRESIDENT

MARISOL, INC.

125 FACTORY LANE, MIDDLESEX, NJ 08846

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

Name: [Please Type]

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

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

Tel. Number: \_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

NATIONAL STARCH AND CHEMICAL

FOR

COMPANY, INC.

Date: Sept. 13, 1995

Alexander M. Samson, Jr.  
COUNSEL, REGULATORY AFFAIRS  
10 FINDERNE AVE  
BRIDGEWATER, NJ 08807  
 [Name -- Please Type]  
 [Title -- Please Type]  
 [Address -- Please Type]

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

Name: [Please Type] Alexander M. Samson, Jr.  
 Title: Counsel, Regulatory Affairs  
 Address: 10 FINDERNE AVE.  
 Tel. Number: BRIDGEWATER, NJ 08807

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

September 19, 1995

FOR Nicholas Enterprises, Inc.

By:

Raymond J. Nicholas  
Raymond J. Nicholas, President  
27-33 Iowa Avenue  
Paterson, New Jersey 07503

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

Name: Gerard M. Giordano, Esq.  
Title: Attorney for Nicholas Enterprises, Inc.  
Address: 25 Main Street, Hackensack, NJ 07602  
Tel. No.: 201-525-6306

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR \_\_\_\_\_ COMPANY, INC.  
OCCIDENTAL CHEMICAL CORPORATION

Date: September 25, 1995

J. Alan Mack  
[Name -- Please Type] J. Alan Mack  
[Title -- Please Type] Assoc. General Counsel  
[Address -- Please Type] 5005 LBJ Freeway  
Dallas, Texas 75244

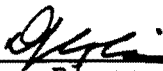
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] Michael M. Gordon, Esq.  
Title: Cadwalader, Wickersham & Taft  
Address: 100 Maiden Lane, New York, N.Y. 10038  
Tel. Number: (212) 504-6000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR The Okonite COMPANY, INC.

Date: September 14, 1995

  
[Name - Please Type] David J. Sokira  
[Title -- Please Type] V.P. Finance & Treasurer  
[Address -- Please Type] P. O. Box 340  
Ramsey, NJ 07446

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

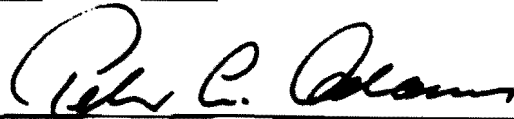
Name: [Please Type] Norman W. Spindel, Esq.  
Title: Lowenstein, Sandler, Kohl, Fisher & Boylan  
Address: 65 Livingston Avenue Roseland, NJ 07068-1791  
Tel. Number: (201) 992-8700



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR PACQUET ONEIDA COMPANY, INC.

Date: September 21, 1995



[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]

Peter L. Adams.

President

10 Clifton Blvd.,

Clifton, NJ 07015

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

Name: [Please Type]

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

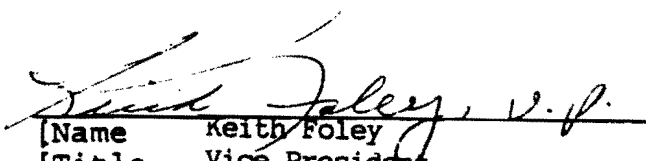
Address: \_\_\_\_\_

Tel. Number: \_\_\_\_\_

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR Radiac Research Corporation  
~~COMPANY, INC.~~

Date: August 29, 1995

  
[Name Keith Foley  
[Title Vice President  
[Address 261 Kent Avenue  
Brooklyn, NY 11211

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

Name: Keith Foley  
Title: Vice President  
Address: 261 Kent Avenue, Brooklyn, NY 11211  
Tel. Number: (718) 963-2233

81

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR RHONE-POULENC INC.

Date: September 14, 1995

  
Name - John M. Iatesta  
Title Senior Corp. Counsel & Ass't Secretary  
Address - CN 5266, Princeton, NJ 08543-5266

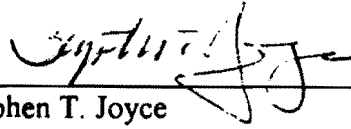
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Heather C. Winett, Esq.  
Title: Attorney, Environmental Law Department  
Address: Stauffer Management Company, 1800 Concord Pike,  
Tel. Number: (302) 886-3000 Wilmington, DE 19850

3717

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

**FOR: R & R Sanitation**



Stephen T. Joyce  
Remedial Projects Manager  
580 Edgewater Drive  
Wakefield, MA 01880

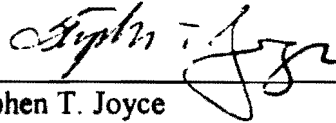
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Stephen T. Joyce  
Group Remedial Projects Manager  
580 Edgewater Drive  
Wakefield, MA 01880  
617/246/6030

copy to: Michael Brennan  
Environmental Counsel  
580 Edgewater Drive  
Wakefield, MA 01880  
617/246/6019

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR: SCA Services, Inc.



---

Stephen T. Joyce  
Remedial Projects Manager  
580 Edgewater Drive  
Wakefield, MA 01880

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

Stephen T. Joyce  
Group Remedial Projects Manager  
580 Edgewater Drive  
Wakefield, MA 01880  
617/246/6030

copy to: Michael Brennan  
Environmental Counsel  
580 Edgewater Drive  
Wakefield, MA 01880  
617/246/6019

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR STEPAN COMPANY, INC.

Date: September 13, 1995



Jeffrey W. Bartlett

[Name -- Vice President - General Counsel  
[Title -- and Regulatory Affairs  
[Address -- Stepan Company  
22 W. Frontage Road  
Northfield, IL 60093

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

Name: Jeffrey W. Bartlett  
Title: Vice President - General Counsel & Regulatory Affairs  
Address: Stepan Company, 22 W. Frontage Road, Northfield, IL 60093  
Tel. Number: (708) 501-2370

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Allied Signal, Inc., relating to the Cortese Landfill Superfund Site.

FOR TOWN OF TUSTEN ~~COMPANY XXX INC.~~

Date: 9/12/95

*George Burkle*

GEORGE BURKLE  
 [Name -- Please Type]  
 [Title -- Please Type] Supervisor  
 [Address -- Please Type]  
 210 Bridge Street, Narrowsburg, NY 12764

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

Name: [Please Type] GEORGE BURKLE  
 Title: SUPERVISOR  
 Address: 210 BRIDGE STREET, NARROWSBURG, NY 12764  
 Tel. Number: (914) 252-7146

*George Burkle*