

I. Procedural History

On September 27, 1993, the United States initiated this action pursuant to Sections 107(a) and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to recover costs expended by the Environmental Protection Agency ("EPA") in responding to the contamination of the Keystone Sanitation Landfill Site ("Site") up until September 27, 1990. The complaint also seeks a declaratory judgment of the liability of Defendants for future response costs that will be incurred in implementing remedial action at the Site. Pursuant to CERCLA's § 107(a) framework, the United States named eleven Defendants as potentially responsible parties ("PRPs"). Eight of the original PRPs -- those referred to as the "Original Generator Defendants"¹ -- were joined under § 107(a)(3), on the theory that they contracted, agreed, or otherwise arranged to dispose of hazardous waste at the Site or transport such waste to the Site. The other three original PRPs -- those referred to as the Keystone Defendants² -- were joined under § 107(a)(1), (2), and/or (3) as the owners or operators of the Site and arrangers and transporters of waste to the Site.

The Original Defendants ("OGD's") thereafter impleaded approximately 180 Third-Party Defendants to obtain, *inter alia*, contribution for response costs pursuant to CERCLA § 113(f) and the Pennsylvania Hazardous Sites Cleanup Act, 35 Pa. Stat. Ann. §§ 6020.702(a) and 6020.1101. Subsequently, certain Third-Party Defendants ("Fourth-

¹The Generator Defendants consist of QUEBECOR Printing Fairfield, Inc.; C&J Clark, America, Inc.; The ESAB Group, Inc.; The Genlyte Group, Inc.; Hanover Bronze and Aluminum Foundry, Inc.; Kemper Industries, Inc.; R.H. Sheppard Company, Inc.; and SKF USA, Inc.

²The Keystone Defendants consist of Keystone Sanitation Company, Inc.; Kenneth F. Noel, individually and *f/d/b/a* Keystone Sanitation Company; Anna M. Noel, individually and *f/d/b/a* Keystone Sanitation Company.

Party Plaintiffs") Plaintiffs filed a complaint against approximately 600 Fourth-Party Defendants seeking, *inter alia*, contribution, which complaint was subsequently amended to add approximately 40 Fourth-Party Defendants.

The United States has since worked diligently towards resolving this mammoth litigation. On April 5, 1996, May 23, 1996, and November 24, 1998, the United States lodged a trilogy of proposed *de micromis* consent decrees. The United States then lodged a proposed consent decree with Third- and Fourth-Party Defendants on October 22, 1997. Thereafter, on January 12, 1998, the Commonwealth of Pennsylvania, Department of Environmental Protection ("Commonwealth") filed a motion to intervene as a party-plaintiff. The court granted the motion by order dated March 6, 1998. The Commonwealth filed its complaint in intervention on March 9, 1998, naming as intervenor-Defendants the OGD's and the Keystone Defendants.

On June 23, 1998, the United States and the Commonwealth lodged a proposed consent decree with the OGD's. The notice and comment period has expired with respect to each of the aforementioned proposed consent decrees. By memorandum and order dated July 28, 1999, the court approved the three *de micromis* consent decrees. With this memorandum, the court will address the United States and the Commonwealth's motion to enter the consent decree with the OGD's and any objections thereto.

II. Discussion

The instant consent decree obligates the eight OGD's to implement the underground component of the remediation of the Site. The OGD's are also required to install protective filters and monitor nearby residential drinking wells. Furthermore, the

OGD's will be required to pay \$125,000 toward natural resource damage to the Site, reimburse to the Commonwealth \$13,000 in past costs and \$30,000 of the state natural resource damages. The total cost to the OGD's is estimated to be between \$4.85 million and \$7.4 million. In exchange, the consent decree provides OGD's with protection against contribution claims.

The Owner/Operators, consisting of the Keystone Defendants and Waste Management of Pennsylvania ("Waste Management"),³ and Third- and Fourth-Party Defendants object to the consent decree.⁴ These objections are that: (1) Section VI of the decree has the effect of reallocating work to the Keystone Defendants; (2) the consent decree fails to obligate the OGD's to remediate any contamination of surface water and sediment; (3) the allocation of costs leaves Waste Management and the Keystone Defendants with a disproportionate share of Site remediation costs; and (4) the OGD's continue to retain contribution rights against Waste Management and the Keystone Defendants. Additionally, Waste Management and the Keystone Defendants object to the scope of the contribution protection afforded the OGD's. The court will address these objections seriatim.

At the outset, the court notes that the objections to Section VI of the decree appear to be moot. (See letter of July 22, 1999 from the United States to the court

³ By memorandum and order dated August 22, 1996, the court determined that Third-Party Defendant Waste Management of Pennsylvania was liable as the successor to the Keystone Defendants.

⁴ These Third- and Fourth-Party Defendants' objections are contingent and will be withdrawn upon the court's approval of their proposed consent decree. As the court is issuing a companion memorandum and order on this date entering the consent decree with those parties, it will not address their objections to the instant consent decree with the OGD's.

(attached to this memorandum.) Thus, the court will proceed to address the next objection.

The Owner/Operators argue that paragraph 59 of the decree relieves the OGD's from any obligation for work pertaining to "sediment or surface water remediation other than monitoring" This provision, the Owner/Operators argue, places future remediation of surface water and sediment outside the scope of groundwater remediation for which the OGD's are responsible. (See Owner/Opers.' Mem. In Opp. To Consent Decree at 12.) As the United States points out, however, the consent decree contains a reopener provision: Paragraphs 134 and 135 reserve to the EPA the right to sue the OGD's to require remediation of surface water and sediment based on any new information. The Owner/Operators argue, however, that paragraph 59 of the decree could be interpreted to bar the United States from pursuing the OGD's for remediation of surface water or sediment.

The court agrees that the language of Paragraph 59 supports this interpretation. That provision reads, in part: "the Settling Generator Defendants shall not be required under this paragraph to perform such further actions if they pertain to sediment or surface water remediation other than monitoring. . . ." Nevertheless, the United States and the Owner/Operators all agree that there is currently no information to suggest that surface water or sediments must be remedied at the site. All that exists is a remote future possibility of such a need.

This court is, however, not inclined to reject settlements reached at arm's length after months and years of negotiations merely because the costs of a longshot

contingency might fall upon a non-settling party.⁵ Accordingly, the court will not reject the consent decree solely on this basis.

Next, the Owner/Operators contend that the settlement is premature because neither the total site costs nor the value of the OGD's' settlement have been determined. The Owner/Operators argue that the total Site remedial costs can vary between 17.8 million and \$25.9 million, depending upon the remedy ultimately selected. Based upon United States v. Montrose Chemical Corp. Of California, 50 F.3d 741 (9th Cir. 1995), Waste Management argues that the settlement should be rejected. In Montrose the court found there was "no evidence on [the] record from which the district court could have made any determination with respect to estimates of responsibility and damage." Id. at 746-47. The court went on to note "that the proper way to gauge the adequacy of settlement amounts to be paid by settling PRPs is to compare the proportion of total projected costs to be paid by the settlors with the proportion of liability attributable to them, and then to factor into the equation any reasonable discounts for litigation risks, time, savings, and the like, that may be justified." Id. at 747 (citing United States v. Charles George Trucking, Inc., 34 F.3d 1081, 1087 (1st Cir. 1994).

The court has reviewed the declarations of Leo J. Mullen, an EPA Civil Investigator for cost recovery in CERCLA actions, and Cynthia Tibbott, senior Environmental Contaminants Specialist for the United States Fish and Wildlife Service. The court believes that the cost estimates presented by Mullen are sufficient to support the United States' projected remedial costs. The court points out that:

⁵ This concern also overlaps with the Keystone Defendants' objection that the settlement with the OGD's leaves them with a disproportionate share of liability, which is discussed infra.

CERCLA's policy of encouraging early settlements is strengthened when a government agency charged with protecting the public interest "has pulled the laboring oar in constructing the proposed settlement." . . . Although "the true measure of the deference due depends on the persuasive power of the agency's proposal and rationale," a district court reviewing a proposed consent decree "must refrain from second-guessing the Executive Branch." . . . Such deference is appropriate given "[t]hat so many affected parties, themselves knowledgeable and represented by experienced lawyers, have hammered out an agreement at arm's length and advocate its embodiment in a judicial decree."

Montrose, 50 F. 3d at 746 (citations omitted). To the extent that the total remedial costs are subject to variation, the court is mindful of the general federal policy rewarding early settlements in CERCLA cost recovery actions.

Congress explicitly created a statutory framework that left nonsettlers at risk of bearing a disproportionate amount of liability Disproportionate liability, a technique which promotes early settlements and deters litigation for litigation's sake, is an integral part of the statutory plan. . . . Congress purposed that all who choose not to settle confront the same sticky wicket of which appellants complain.

United States v. Cannons Engineering Corp., 899 F.2d 79, 91-92 (1st Cir. 1990).

Accordingly, the court will not reject the decree as premature.

Next, the Owner/Operators object to paragraph 146 of the decree which reads:

For Matters Addressed in the Settlement, upon entry of this Consent Decree, Settling Generator Defendants agree to the release and waive all claims or causes of action under Section 106, 107 and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, Sections 7002 of RCRA, 42 U.S.C. § 6972, and Sections 701

and 705 of HSCA, 35 P.S. §§ 6020.701 and 6020.705, or claims for similar relief, that they may have, including for contribution, against any person or party; except that in the event that United States selects, or enters into a settlement for performance of, a remedial alternative for source control other than the landfill cap selected in the OUI ROD, the Settling Generator Defendants shall retain their claims against the Owner/Operators.

The United States argues that this provision is necessary in the event that the EPA selects a remedial alternative other than the landfill cap selected in the 1990 Record of Decision ("ROD"). Because the alternative proposed by Owner/Operators is a more expensive alternative, the United States argues that it would be premature to require the OGD's to waive their contribution claims with respect to the remedial alternative. Further, it contends that paragraph 146 primarily permits the OGD's to pursue contribution claims if the Owner/Operators fail to settle with the United States and the Commonwealth or in the event of a future settlement with the Owner/Operators, to object to the proposed consent decree negotiated. (See United States' Br. in Supp. at 28.)

The Owner/Operators do not object to paragraph 146 under this interpretation. However, to the extent that it permits the OGD's to retain contribution rights against the Owner/Operators, notwithstanding a consent decree between the United States and the Owner/Operators, their objection stands.

Once again, this court is being asked to address contingencies that may never arise. The court is aware that the United States and the Owner/Operators are in settlement negotiations. The Owner/Operators are free to bargain for, *inter alia*, protection from contribution claims in their consent decree. If the parties arrive at any terms to which the OGD's object, the court will be required to address and resolve those

issues at that time. That the OGD's consent decree allows them to retain their contribution claims at this time does not render it unfair or unreasonable.

The remaining objections consist of four concerns regarding the scope of contribution protection given to the OGD's. These objections are: (1) the inclusion of natural resource damages for which contribution protection is afforded is unfair to non-settlers; (2) claims from "non-liable" parties should not be included in the protection; (3) more statutory claims should be included in the section in which the OGD's agree to forego additional contribution claims; and (4) contribution protection should not extend to actions taken by the OGD's during implementation of the remedy which create new contamination or exacerbate existing contamination at the site.

It appears from their brief that the Owner/Operators accept the United States' explanation as to objections 1, 3 and 4 above and, therefore, the objections are moot. As to objection 2, the United States and Owner/Operators all concede that no private claims exist at present. Whether any may exist in the future is entirely speculative. (Owner/Opers.' Br. In Opp. at 15.)

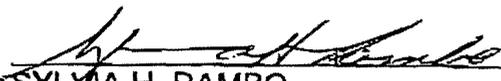
On this point, the court notes that fairness and reasonableness are comparative terms and cannot be measured in a vacuum. See Montrose, 50 F.3d at 747. Based on the record presently before this court, no private party claims exist and, therefore, the contribution protection clauses are fair, reasonable, and consistent with CERCLA's policies.

The record before this court serves as a factually sufficient basis for the informed decision reached by the settling parties. The settlement appears to have been obtained through arms-length negotiations. Furthermore, approval of this consent decree will benefit the public as it will allow remedial work to proceed at the Site.

According to the declaration of Leo J. Mullen, upon the entry of this decree the total Generator share will be almost fifty percent of the Site-wide costs. This will leave the Owner/Operators with the remaining fifty percent. Mullen estimates that the Owner/Operators were responsible for nearly two-thirds of the volume of waste hauled to the Site. (See Mullen Decl. at ¶ 21.) This court previously noted that this percentage is not an unfair assessment. See United States v. Keystone Sanitation, Inc., 903 F. Supp., 803, 811 (M.D. Pa. 1995).

III. Conclusion

The court finds that the settlement with the OGD's is fair, reasonable, and in accordance with CERCLA policies and objectives. Accordingly, the court will enter the consent decree.


SYLVIA H. RAMBO
United States District Judge

Dated: September 10, 1999.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

*De MAXIS
8 depts*

UNITED STATES OF AMERICA and

THE PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Plaintiffs,

v.

C & J CLARK AMERICA, INC.
THE ESAB GROUP, INC.
QUEBECOR PRINTING FAIRFIELD INC.)
HANOVER BRONZE & ALUMINUM
FOUNDRY, INC.)
KEMPER INDUSTRIES, INC.)
R.H. SHEPPARD CO., INC.)
SKF USA INC.)
THE GENLYTE GROUP INCORPORATED)

Defendants.

CIVIL ACTION NO. 1:CV-93-1482

FILED
HARRISBURG, PA

SEP 10 1999

MARY E. D'ANDREA, CLERK
Per: *[Signature]*

CONSENT DECREE [Re: 1527-1]
with ORIG GENERATOR DEPTS.

FILED
HARRISBURG, PA

SEP 10 1999

MARY E. D'ANDREA, CLERK
Per: *[Signature]*
Deputy Clerk

90-11-266A

DEPARTMENT OF JUSTICE

SEP 14 1999

RECORDS SECTION

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

_____)
UNITED STATES OF AMERICA AND THE))
PENNSYLVANIA DEPARTMENT OF))
ENVIRONMENTAL PROTECTION,))
))
Plaintiffs,))
)) CIVIL ACTION NO. 1:CV-93-1482
v.))
))
C & J CLARK AMERICA, INC.))
QUEBECOR PRINTING FAIRFIELD INC.))
THE ESAB GROUP INC.))
HANOVER BRONZE & ALUMINUM))
FOUNDRY, INC.))
KEMPER INDUSTRIES, INC.))
R.H. SHEPPARD CO., INC.))
SKF USA INC.))
THE GENLYTE GROUP INCORPORATED))
))
))
Defendants.))
_____)

CONSENT DECREE

I. BACKGROUND

1. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act

("CERCLA"), 42 U.S.C. §§ 9607 and 9613. On January 12, 1998, the Commonwealth of Pennsylvania, Department of Environmental Protection (the "State") filed a Motion to Intervene and a proposed Complaint in Intervention in this matter, pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, and Sections 507 and 701 of the Pennsylvania Hazardous Sites Cleanup Act ("HSCA"), 35 P.S. §§ 6020.101 et seq., and the Pennsylvania Declaratory Judgments Act. The Court granted the State's motion on March 6, 1998.

2. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Keystone Sanitation Landfill Superfund Site in Union Township, Adams County, Pennsylvania, together with accrued interest; (2) a declaration of the liability of the Settling Generator Defendants (as defined *infra*) pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), that will be binding on any subsequent actions to recover further response costs; and (3) such other relief as the Court finds appropriate. The State in its Complaint in Intervention has alleged the same claims under CERCLA, as well as HSCA.

3. The Settling Generator Defendants filed answers,

affirmative defenses and counterclaims to the United States' complaint, denying liability and challenging, *inter alia*, the record of decision and unilateral administrative order (as defined *infra*) issued by EPA in relation to the Site.

4. The Settling Generator Defendants also filed a third-party complaint under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), against a number of other persons, seeking, inter alia, contribution toward any liability that might be imposed on the Settling Generator Defendants. The third-party defendants, in turn, filed fourth-party complaints under Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), against a number of other persons, seeking contribution toward any liability that might be imposed on them.

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

6. 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 and the National Oceanic and Atmospheric Administration of EPA's negotiations with the Settling Generator Defendants regarding the release of hazardous substances at the Site to invite those agencies to assess whether such releases may have resulted in injury to the natural resources under Federal trusteeship and the Department of the Interior agreed to participate in the negotiation of this Consent Decree.

7. The defendants that have entered into this Consent Decree ("Settling Generator Defendants") do not admit any liability arising out of the transactions or occurrences alleged in the complaint or the Complaint in Intervention, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

8. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1987, 52 Fed. Reg. 27620.

9. In response to EPA's determination that a release

or a substantial threat of release existed at the Site, EPA commenced in 1989 a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

10. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the availability of the RI/FS and of the proposed plan for remedial action on July 20, 1990, 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, and a public meeting was held, which meeting was recorded in a transcript.

11. The decision by EPA on the remedial action to be implemented at the Site for Operable Unit One ("OU1") is embodied in a Record of Decision ("ROD"), executed on September 30, 1990, as to which the Commonwealth of Pennsylvania has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

12. EPA issued a CERCLA § 106 Unilateral Administrative Order, EPA Docket No. III-91-56-DC, on June 28, 1991, as modified on September 6, 1991, for performance of the ROD ("the UAO"). The remedial design and the onsite groundwater remedy selected pursuant to the ROD for OU1 are being implemented

by the Settling Generator Defendants and others pursuant to the UAO as of the date of lodging of this Decree.

13. The ROD for OU1 also called for a second operable unit for the Site ("OU2") "to further study the groundwater contamination in the off-site monitoring and residential wells", OU1 ROD, page 2. EPA has performed an RI and a Focused Feasibility Study ("FFS") to, inter alia, evaluate an appropriate remedy for off-site contamination of the groundwater, surface water and sediments.

14. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA has published, or will publish shortly, notice of the availability of the RI/FFS and of the proposed plan for such remedy in a local newspaper of general circulation. EPA will or presently is providing an opportunity for written and oral comments from the public on the proposed plan for the response actions to address the off-site groundwater contamination.

15. EPA will review the public comments and will finalize its decision concerning the response actions to be taken to, inter alia, address off-site (i.e., outside the landfill boundaries) groundwater, surface water and sediment contamination and other related environmental impacts in light of those comments. It is anticipated that its final remedial

decision will be embodied in an Amendment to the OUI ROD.

16. The parties to this Consent Decree have agreed that the Settling Generator Defendants will perform response actions at the Site relating to groundwater capture, containment, and remediation, including, but not limited to, construction of a groundwater treatment facility and a system of groundwater extraction and monitoring wells, installation of filtration systems and monitoring for selected residences and monitoring of groundwater, surface water and sediments, as set forth in this Decree, to address groundwater contaminated above Groundwater Performance Standards both on-site and off-site. A cap over the Waste Material at the former Keystone Sanitation Landfill may be constructed at the Site, but the Settling Generator Defendants will not be responsible to the United States or the State for the cap, or for the Landfill Cap Work, as defined herein.

17. Based on the information presently available to EPA, EPA believes that the Groundwater Remedial Action will be properly and promptly conducted by the Settling Generator Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

18. Solely for the purposes of Section 113(j) of CERCLA, the OUI ROD, as amended, and the Groundwater Remedial

Action to be performed by the Settling Generator Defendants, shall constitute a response action taken or ordered by the President.

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

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

II. JURISDICTION

20. 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 the Settling Generator Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Generator Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Generator 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

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

22. Settling Generator Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Groundwater Remedial Action (as defined *infra*) required by this Consent Decree and to each person representing any Settling Generator Defendant with respect to the Site or the Groundwater Remedial Action, and shall condition all contracts entered into hereunder upon performance of the Groundwater Remedial Action in conformity with the terms of this Consent Decree. Settling Generator Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Groundwater Remedial Action required by this Consent Decree. Settling Generator Defendants shall nonetheless be responsible for ensuring that their contractors

and subcontractors perform the Groundwater Remedial Action contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Generator Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

23. 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:

a. "Additional Work" shall mean, for purposes of Section VI and other provisions of this Consent Decree, any additional response actions or activities required by the final OU1 ROD Amendment that are above and beyond those required by the FFS and the groundwater components of the OU1 ROD and the UAO, including such measures as may be required as a result of the bog turtle survey.

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

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

d. "Day" shall mean a calendar day unless expressly stated to be a Working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. 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.

e. "Deleted Work" shall mean, for purposes of Section VI of this Consent Decree, any response actions required by the FFS or the groundwater components of the OUI ROD and the UAO that expressly are not required by, or expressly are not incorporated in, the OUI ROD Amendment at the Site.

f. "Department of the Interior" or "DOI" shall mean the United States Department of the Interior and any successor departments or successor agencies of the United States.

g. "Duly Authorized Representative" shall mean a person set forth or designated in accordance with the procedures set forth in 40 C.F.R. § 270.11(b).

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

i. "Federal Future Response Costs" for purposes of this Decree shall mean those costs incurred by the United States in the event that the United States takes over the Groundwater Remedial Action as provided in Section XXIII, Paragraph 142, or incurs response costs to obtain access pursuant to Section X, Paragraph 66, performs an Emergency Response related to Groundwater Remedial Action under Section XVI, Paragraph 95, or incurs costs in enforcing the Consent Decree, including the costs incurred in connection with any Dispute Resolution in which the United States prevails or the Settling Generator Defendants unilaterally withdraw their claim(s).

j. "Final Remedial Action" shall mean all those activities for the Groundwater Remedial Action and the Landfill Cap Work, exclusive of any Remedial Design and Landfill Cap Operation and Maintenance.

k. "Focused Feasibility Study" or "FFS" shall mean the

January 29, 1998, Focused Feasibility Study issued by EPA evaluating, inter alia, a remedial action to address off-site groundwater, surface water, and sediment contamination at the Site, and other related environmental impacts, attached hereto as Appendix A.

1. "Groundwater Performance Standards" shall mean the clean-up standards and other measures of achievement for the Groundwater Remedial Action, as set forth in the OU1 ROD, the UAO, and OU1 ROD Amendment. These standards may be modified by EPA in accordance with this Consent Decree, CERCLA, and the NCP.

m. "Groundwater Operation and Maintenance" or "Groundwater O & M" shall mean all activities required to maintain the effectiveness of the groundwater pump and treat system and residential filtration systems, as required under the Groundwater Remedial Design and any Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree. Groundwater Operation and Maintenance shall be included as part of the Groundwater Remedial Action.

n. "The Groundwater Remedial Action" shall mean those response actions required by the OU1 ROD, the UAO, and the OU1 ROD Amendment pertaining to groundwater capture, containment, and remediation, and protection of drinking water wells, as well as

any response actions that the Settling Generator Defendants are obligated to perform pursuant to Section VI of this Consent Decree. It shall specifically include, but is not limited to, construction of a groundwater treatment plant to treat groundwater extracted from the Site; construction of a system of groundwater extraction and monitoring wells that capture and contain groundwater emanating from the Site that is contaminated in excess of Groundwater Performance Standards; installation of filtration systems and monitoring for certain residences; the capture zone analyses; monitoring of groundwater, surface water and sediments set forth in the OU1 ROD, the UAO, and OU1 ROD Amendment; the hydrogeological evaluation report; operation and maintenance of the groundwater pump and treat systems and the residential filtration systems; the bog turtle survey and measures to address potential impacts on bog turtles and/or their habitat if bog turtles are found or identified during the survey. (Such bog turtles measures other than the survey are subject to the cost reimbursement provisions in Section VI.) The Groundwater Remedial Action shall specifically exclude Landfill Cap Work or equivalent control of sources of contamination at the Site, but shall include Groundwater Operation and Maintenance.

o. "The Groundwater Remedial Action Work Plan" shall

mean the document developed for implementation of the Groundwater Remedial Action by the Settling Generator Defendants and any amendments thereto.

p. "The Groundwater Remedial Design" shall mean the remedial design of the Groundwater Remedial Action and attached as Appendix B, and any amendments thereto.

q. "HSCA" shall mean the Pennsylvania Hazardous Sites Cleanup Act, 35 P.S. §§ 6020.101 et seq.

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

s. "Landfill" shall mean that portion of the Site at which material containing a hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), has been disposed.

t. "Landfill Cap Performance Standards" shall mean the Performance Standards set forth in the OU1 ROD pertaining to the Landfill Cap Work, or such other standards for source control as EPA subsequently selects.

u. "Landfill Cap Remedial Action" shall mean

Landfill Cap Work, exclusive of operation and maintenance activities.

v. "Landfill Cap Work" shall mean those response actions required to implement those portions of the OU1 ROD relating to construction of an impermeable cap and active gas extraction system, stormwater management, as well as related operation and maintenance and institutional controls, or such other response actions for source control as EPA may later select. It also shall mean any component of Additional Work, as that term is defined for purposes of Section VI, that EPA does not seek to have the Settling Generator Defendants perform and for which EPA does not provide the 2/3 Payment set forth in Section VI.

w. "Matters Addressed in the Settlement" as that term is used in CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), shall mean (a) all response actions taken or to be taken, including response actions to implement the OU1 ROD and the OU1 ROD Amendment and any Groundwater Remedial Action to be performed under Paragraphs 47 through 50 (Modification of the Groundwater Remedial Action) and under Section VIII (Remedy Review) of this Decree; (b) all CERCLA response costs incurred or to be incurred by the United States, the State, or any other person, including

private parties, with respect to the Site; (c) all HSCA response costs incurred or to be incurred by the State with respect to the Site; and (d) federal and state claims for Natural Resource Damages. The Matters Addressed in this Settlement do not include (1) those response costs, response actions, or federal claims for Natural Resource Damages as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Generator Defendants coming within the scope of such reservations; or (2) those response costs, response actions, or state claims for Natural Resource Damages as to which the State has reserved its rights under this Consent Decree (except for failure to comply with this Decree), in the event that the State asserts rights against Settling Generator Defendants coming within the scope of such reservations.

x. "Municipal Solid Waste" shall mean all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes are essentially the same as waste normally generated by households. Examples of

Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

y. "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, as amended as of the date of this Consent Decree.

z. "Natural Resource Damages" shall mean damages, including costs of damage assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607; and under Sections 301(14) and 702(a)(4) of HSCA, 35 P.S. §§ 6020.301(4) and 6020.702(a)(4), for injury to, destruction of, or loss of any and all natural resources at the Site, as defined in Section 101 of CERCLA, 42 U.S.C. § 9601, within the trusteeship of the United States Department of the Interior and the PADEP.

aa. "OU1 Record of Decision" or "OU1 ROD" shall mean the EPA Record of Decision for the first Operable Unit (OU1) and all attachments thereto, relating to the Keystone Sanitation Landfill Superfund Site, which document is set forth in Appendix C attached hereto, and which was signed on September 30, 1990, by the Regional Administrator, EPA Region III.

bb. "OU1 Record of Decision Amendment" or "OU1 ROD Amendment" shall mean the amendment to the OU1 ROD (or comparable decision document) selecting, inter alia, response actions to address off-site groundwater, surface water, and sediment contamination at the Site and related environmental impacts, which EPA anticipates it will finalize after review of public comments.

cc. "Owner/Operator Defendants" shall mean Keystone Sanitation Company, Inc., Kenneth and Anna Noel, Waste Management of Pennsylvania, Inc. and any successor thereto, Flatbush Golf Course, Inc., the Noel Family Trust, and any other person or entity, other than the sisters of Anna Noel, who has received assets of Keystone Sanitation Company, Inc., or the Noels without adequate consideration in an effort by Keystone Sanitation Company, Inc., or the Noels to avoid liability.

dd. "PADEP" shall mean the Pennsylvania Department of

Environmental Protection, formerly the Pennsylvania Department of Environmental Resources, and any successor departments or agencies of the State.

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

ff. "Parties" shall mean the United States, the State, and the Settling Generator Defendants.

gg. "Plaintiffs" shall mean the United States of America and the State.

hh. "Project Manager" shall mean the Settling Generator Defendants' Supervising Contractor.

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

jj. "Record of Decision" or "ROD" shall mean a document in which EPA selects a remedy for an operable unit at the Site, prepared pursuant to Section 117(b) of CERCLA, 42 U.S.C. § 9617(b) and 40 C.F.R. § 300.430(f).

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

ll. "Settling Generator Defendants" shall mean C & J

Clark America, Inc., Quebecor Printing Fairfield Inc., The Esab Group Inc., Hanover Bronze & Aluminum Foundry, Inc., Kemper Industries, Inc., R.H. Sheppard Co., Inc., SKF USA Inc., and the Genlyte Group Incorporated.

mm. "Sewage Sludge" shall mean solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.

nn. "Site" shall mean the Keystone Sanitation Landfill Superfund Site, which consists of an inactive privately owned landfill situated on an approximately 40-acre tract of land. The Site is located in Union Township, Adams County, Pennsylvania, southwest of Hanover, Pennsylvania, and is approximately 800 feet north of the Pennsylvania-Maryland border, and depicted more particularly in Figure 1 of Appendix A. Notwithstanding the Site Boundaries depicted in Appendix A, the Site shall include the areal extent of contamination, including but not limited to groundwater affected by the release of hazardous substances from the Keystone Sanitation Company Landfill, and areas where hazardous substances have otherwise come to be located, and all suitable areas in very close proximity to the contamination that are necessary for the implementation of the Final Remedial

Action, as provided in the NCP.

oo. "State" shall mean the Commonwealth of Pennsylvania, Department of Environmental Protection.

pp. "State Future Response Costs" for purposes of this Decree shall mean those costs incurred by the State in the event that the United States takes over the Groundwater Remedial Action as provided in Section XXIII, Paragraph 142, including costs incurred by the State pursuant to CERCLA 104(c)(3), or those costs incurred by the State in enforcing the Consent Decree, including the costs incurred in connection with any Dispute Resolution in which the State prevails or the Settling Generator Defendants unilaterally withdraw their claims.

qq: The "UAO" shall mean the CERCLA § 106 Unilateral Administrative Order issued to the Settling Generator Defendants and others by EPA Region III, EPA Docket No. III-91-56-DC, issued on June 28, 1991, as modified on September 6, 1991.

rr. "United States" shall mean the United States of America and any agencies or departments thereof.

ss. "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), 42 U.S.C. § 9601(33).

V. GENERAL PROVISIONS

24. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Generator Defendants, to resolve all claims among the parties to this agreement as provided in this Consent Decree, and to avoid additional protracted litigation at the Site.

25. Commitments by Settling Generator Defendants. Settling Generator Defendants shall finance and perform the Groundwater Remedial Action as specified in Section VI and VII of this Consent Decree. Settling Generator Defendants shall also reimburse the United States and the State for Future Response Costs as provided in this Consent Decree.

26. The obligations of Settling Generator Defendants to finance and perform the Groundwater Remedial Action and to pay Future Response Costs under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Generator Defendants to implement the requirements of this Consent Decree, the remaining Settling Generator Defendants shall complete all such requirements. In the event that any of the Settling Generator Defendants files for

bankruptcy or is placed involuntarily in bankruptcy proceedings, such Settling Generator Defendant shall notify the United States within ten days of such filing.

27. Compliance With Applicable Law. All activities undertaken by Settling Generator Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Generator Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws that pertain to the Groundwater Remedial Action as set forth in the OU1 ROD and the OU1 ROD Amendment. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

28. Permits. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Groundwater Remedial Action conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Groundwater Remedial Action). Where any portion of the Groundwater Remedial Action that is not on-Site requires a federal or state permit or approval, Settling

Generator Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

VI. RELATIONSHIP OF GROUNDWATER REMEDIAL ACTION, UNILATERAL ADMINISTRATIVE ORDER, AND THE OUI ROD AMENDMENT FOR OFF-SITE GROUNDWATER RESPONSE ACTION

31. The UAO. The UAO shall remain in effect until this Consent Decree is entered.

32. Scope of the Groundwater Remedial Action: EPA reserves all its rights and authorities to select response actions at the Site as it determines appropriate to protect human health and the environment. EPA's remedy selection in the OUI ROD Amendment will not be made inconsistent with CERCLA and the NCP. The Settling Generator Defendants shall not have the right

to challenge or seek judicial review of EPA's remedy selection. The Settling Generator Defendants shall perform the Groundwater Remedial Action as required by this Section and this Consent Decree.

33. As of the date of lodging of this Consent Decree, EPA has not finalized the OU1 ROD Amendment but has made the RI and FFS available to the public. The Settling Generator Defendants shall be obligated to perform the Groundwater Remedial Action set forth in or required by the OU1 ROD, the UAO, and the FFS. If the OU1 ROD Amendment requires additional response actions beyond those required by the OU1 ROD, the UAO, and the FFS, Settling Generator Defendants shall be obligated to perform such additional response actions to the extent set forth in this Paragraph:

(a) Subject to Paragraph 35, the Settling Generator Defendants shall not be required to implement the Deleted Work.

(b) The Settling Generator Defendants shall be required to perform any Additional Work if the projected cost of such Additional Work, minus the aggregate projected cost of Deleted Work, does not exceed \$75,000, or unless Settling Generator Defendants do not make a submission pursuant to Section (c) below. Settling Generator Defendants shall have the burden to

demonstrate that any projected costs of Additional Work exceed \$75,000.

(c) In the event Settling Generator Defendants believe that the aggregate projected costs of Additional Work, minus the aggregate projected costs of Deleted Work, will exceed \$75,000, the Settling Generator Defendants shall submit to EPA for its review and approval as part of their amendment of the Groundwater Remedial Design: (i) detailed cost estimates for each component of Additional Work; and (ii) detailed cost estimates for any component of Deleted Work.

(d) EPA will consider the Settling Generator Defendants' submission and provide, as part of EPA's review of the entire Amendment to the Groundwater Remedial Design pursuant to Section XII, a written response to the Settling Generator Defendants' cost submission in which EPA will either approve the submission, request clarification or further information and/or disapprove the submission. In the event of EPA's disapproval, EPA will specify what it disapproves of. In the event EPA disagrees with the appropriateness of the cost estimates, it will specify in its response the alternative amount(s) it considers appropriate. The Settling Generator Defendants' submission and EPA's response under this Paragraph shall be subject to Section

XXI (Dispute Resolution) only as to (i) whether Settling Generator Defendants accurately identified Deleted Work or Additional Work as defined above; and (ii) the appropriate amount of the estimated costs. The Settling Generator Defendants shall not have the right to challenge or seek judicial review of EPA's remedy selection.

(e) Settling Generator Defendants shall perform Additional Work to the extent the aggregate projected costs of such Additional Work, minus the aggregate projected costs of Deleted Work, exceeds \$75,000, provided that EPA makes a payment, from the Site Special Account or other sources, to reimburse Settling Generator Defendants for two-thirds (2/3) of such costs in excess of \$75,000. Settling Generator Defendants shall be obligated to perform all components of Additional Work up to projected costs of \$75,000, but shall not be obligated to perform those components of Additional Work in excess of \$75,000, if EPA does not pay Settling Generator Defendants its 2/3 Payment. In that event, the definition of "Groundwater Remedial Action" in Paragraph 23 shall be deemed to exclude such Additional Work, but the definition of Landfill Cap Work and Final Remedial Action shall be deemed to include such work.

34. The Parties anticipate that, in the event the

Consent Decree with the third and fourth party defendants lodged with the Court on October 22, 1997, is entered, funds for Site remediation and the EPA payments under this Section will be available in a Special Account for the Site. Alternatively, funds from other sources or settlements may become available. EPA will not use funds from any settlement or judgment from the Owner/Operator Defendants for the 2/3 Payment, if the effect is to materially alter the respective responsibilities of the Owner/Operator Defendants for the landfill cap selected in the OU1 ROD and the Settling Generator Defendants for the Groundwater Remedial Action at the Site. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law. Any payment for Additional Work to be made to the Settling Generator Defendants pursuant to this Section shall be made at the same time as, and pursuant to the procedures set forth in, Section XVIII (Payments to Settling Generator Defendants). In the event that funds are not available upon issuance of the OU1 ROD Amendment, but become available before the 70% Milestones are attained and EPA makes the payments to the Settling Generator Defendants pursuant to Section XVIII,

the Settling Generator Defendants shall remain obligated to perform such Additional Work provided that EPA makes the 2/3 Payment.

35. This Section VI is designed to address only Deleted and Additional Work through comparing the work required by the OUI ROD Amendment to the work required by the FFS, OUI ROD, and the UAO at the time of issuance of the ROD Amendment and submission and approval of the Remedial Design Amendment. This Section in no way limits or applies to subsequent developments at the Site, including any obligations of the Settling Generator Defendants under this Decree pursuant to Paragraphs 47 through 50, (Modification of the Groundwater Remedial Action); Section VIII (Remedy Review); or under Section XXIII, Paragraphs 134, 135 and 139 (United States' Reservations).

**VII. PERFORMANCE OF THE GROUNDWATER REMEDIAL ACTION
BY SETTLING GENERATOR DEFENDANTS**

36. Supervising Contractor. All aspects of the Groundwater Remedial Action to be performed by Settling Generator Defendants pursuant to Sections VII (Performance of the Groundwater Remedial Action by Settling Generator Defendants), VIII (Remedy Review), XI (Quality Assurance, Sampling, and Data Analysis) and Section XVI (Emergency Response) of this Consent

Decree shall be under the direction and supervision of the Supervising Contractor. The Settling Generator Defendants designate de maximis, inc., as the Supervising Contractor. If at any time thereafter, Settling Generator Defendants propose to change the Supervising Contractor, Settling Generator Defendants shall give such notice to EPA. EPA can accept or disapprove the selection of the Supervising Contractor, and the Settling Generator Defendants must obtain a notice of acceptance of such change from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Groundwater Remedial Action under this Consent Decree.

37. If EPA disapproves the selection of a proposed Supervising Contractor, EPA will notify Settling Generator Defendants in writing. Settling Generator Defendants shall submit to EPA a list of at least three (3) contractors, including the qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's notice. EPA will provide written notice of the names of any contractor(s) whose selection it would accept. Settling Generator Defendants may select any contractor from that list and shall notify EPA of the name of the contractor selected within twenty-one (21) days

of EPA's written notice.

38. If EPA fails to provide written notice of its acceptance or disapproval as provided in the foregoing Paragraph, and this failure prevents the Settling Generator Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Generator Defendants may seek relief under the provisions of Section XX (Force Majeure) of this Consent Decree.

39. Other Contractors: The Settling Generator Defendants shall submit to EPA and the State for acceptance by EPA the names and qualifications of any additional contractors they propose to use to satisfy any requirement of this Consent Decree before such contractor performs any Work. If EPA does not respond with a notice accepting or disapproving the proposal for additional contractors within fourteen (14) days of receipt by EPA of Settling Generator Defendants' selections, the proposal for additional contractors shall be deemed accepted. In the event EPA disapproves any proposed contractor, Settling Generator Defendants shall submit to EPA and the State a list of at least three contractors, including the qualifications of each, that would be acceptable to them within ten (10) days of receipt of EPA's notice. EPA will provide written notice of the names of

any contractor(s) whose selection it would accept. Settling Generator Defendants may select any contractor from that list and shall notify EPA of the name of the contractor selected within five (5) days of EPA's written notice.

40. Amendment to the Groundwater Remedial Design and Groundwater Remedial Action Work Plan. Within 30 days of issuance of the OU1 ROD Amendment, Settling Generator Defendants shall submit to EPA a draft amendment to the Groundwater Remedial Design for EPA's review and comment pursuant to Section XII. The amendment to the Groundwater Remedial Design shall provide for design of the remedy set forth in the OU1 ROD Amendment and for achievement of the Groundwater Performance Standards and other requirements set forth in the OU1 ROD Amendment, the OU1 ROD, the UAO and this Consent Decree. The draft Groundwater Remedial Design Amendment shall include but not be limited to:

- a. a revised Groundwater Design Criteria Report, including:
 1. project description;
 2. design requirements and provisions;
 3. process flow diagrams;
 4. operation & maintenance requirements;
- b. a revised Basis of Design Report, including:

1. justification of design assumptions;
 2. a project delivery strategy;
 3. Groundwater Remedial Design permits plan for off-site permits;
 4. Revised easement/access requirements;
- c. Revised Drawings and Specifications, including:
1. outline of technical specifications;
 2. revised schematics and drawings;
 3. chemical and geotechnical data (including data from pre-design activities);
 4. Groundwater modeling results;
- d. a value engineering screen; and
- e. Final Groundwater implementation schedule.
- f. Costs estimates and identification of Additional Work and Deleted Work set forth in Section VI, Paragraph 33(c).

41. Within 30 days of EPA's approval of the Amendment to the Groundwater Remedial Design, Settling Generator Defendants shall submit an amendment to the Groundwater Remedial Action Work Plan. The amendment to the Groundwater Remedial Action Work Plan shall include amendments to the previously approved Remedial Action Work Plan determined by EPA to be necessary to address the

provisions of the OU1 ROD Amendment, including but not limited to revisions of the following:

- a. Waste Management Plan;
- b. The Sampling and Analysis Plan, containing:
 1. A Field Sampling Plan;
 2. A Quality Assurance Project Plan (QAPP);
- c. The Health and Safety Plan;
- d. The Remedial Action Contingency Plan;
- e. Construction Quality Assurance Plan ("CQAP"), 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; and
- f. An Operation and Maintenance Plan.

42. Amendment to the Groundwater Remedial Action Schedule. Implementation of the Groundwater Remedial Action required by the OU1 ROD shall not be delayed during the design of the amendment to the Groundwater Remedial Action Work Plan unless EPA otherwise approves.

43. Upon approval of the amendment to the Groundwater Remedial Action Work Plan by EPA and submittal of the Health and

Safety Plan for all field activities to EPA, Settling Generator Defendants shall implement the Groundwater Remedial Action Work Plan as amended in accordance with the schedules and methodologies contained therein. The Settling Generator Defendants shall submit to EPA all plans, submittals, and other deliverables required under the approved amendment to the Groundwater Remedial Action Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions).

44. Upon approval, following a reasonable opportunity for review and comment by the State, of the Groundwater Remedial Action Work Plan by EPA, Settling Generator Defendants shall implement the activities required under the Groundwater Remedial Action Work Plan. The Settling Generator Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Groundwater Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Generator Defendants shall not commence to implement the amendment to the Groundwater Remedial Action Work prior to approval of the amendment to the Groundwater Remedial Action Work

Plan.

45. Subject to the following paragraph concerning technical impracticability and to Section XX (Force Majeure), the Settling Generator Defendants shall continue to implement the Groundwater Remedial Action until the Groundwater Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree, pages 21 and 22 of the FFS, and/or the applicable pages of the OUI ROD Amendment.

46. Technical Impracticability. The Settling Generator Defendants may petition EPA to waive compliance with one or more of the Groundwater Performance Standards for Contaminants of Concern ("COCs") at the Site based on a demonstration that it is technically impracticable, from an engineering perspective, within the meaning of Section 121(d)(4)(c) of CERCLA, 42 U.S.C. § 9621(d)(4)(c) and any amendments thereto, to attain those standards. The determination of whether attainment of a particular Groundwater Performance Standard is technically impracticable will be made by EPA, in consultation with the State, and will be based on the engineering feasibility and reliability of the remedy. Settling Generator Defendants shall use the procedures in Appendix D to petition EPA for a waiver based on technical impracticability.

47. Modification of the Groundwater Remedial Action.

If EPA determines that modification of the Groundwater Remedial Action is necessary to achieve and maintain the Groundwater Performance Standards or to carry out and maintain the effectiveness of the Groundwater Remedial Action, as defined in this Consent Decree, EPA may (1) require that such modification be incorporated into the amendment to the Groundwater Remedial Action Work Plan, the Groundwater Operation and Maintenance Plan, and/or any other plan relating to such Groundwater Remedial Action, and/or (2) require that the Settling Generator Defendants submit a plan for EPA approval which incorporates such modification to Groundwater Remedial Action and implements such Plan; provided, however, that a modification may be required pursuant to this Paragraph only to the extent that it is consistent with the scope of the remedy selected for the Groundwater Remedial Action.

48. For the purposes of these Paragraphs 47 through 50, and for Section XV (Certifications of Completion) only, the "scope of the remedy selected in the Groundwater Remedial Action" shall include all response actions, measures, and technologies set forth in the definition of Groundwater Remedial Action, and shall specifically exclude Landfill Cap Work.

49. If Settling Generator Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XXI (Dispute Resolution), Paragraph 120. The Groundwater Remedial Design, the Groundwater Remedial Action Work Plan, the Groundwater Operation and Maintenance Work Plan, and/or related plans or submissions, shall be modified in accordance with final resolution of the dispute.

50. Settling Generator Defendants shall implement any Groundwater Remedial Action required by any modifications incorporated in the amendment to the Groundwater Remedial Action Work Plan, the Groundwater Operation and Maintenance Work Plan, and/or in work plans developed under this Paragraph.

51. Settling Generator Defendants acknowledge and agree that nothing in this Consent Decree, or in any design or work plan submission, constitutes a warranty or representation of any kind by the United States that compliance with the work requirements set forth in the Groundwater Remedial Action Work Plan will achieve the Groundwater Performance Standards. Nothing in this Section shall be construed to limit EPA's authority to require performance of further response actions to achieve Groundwater Performance Standards as otherwise provided in this

Consent Decree.

52. Settling Generator 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 ten (10) cubic yards.

53. The Settling Generator 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.

54. The Settling Generator 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.

55. The identity of the receiving facility and state will be determined by the Settling Generator Defendants following the award of the contract for Groundwater Remedial Action construction. The Settling Generator Defendants shall provide the information required by Paragraph 52 through 54 as soon as practicable after the award of the contract but in no case less than seven (7) days before the Waste Material is actually shipped.

VIII. REMEDY REVIEW

56. Periodic Review. Settling Generator Defendants shall conduct such studies and investigations as requested by EPA in order to permit EPA to conduct reviews of whether the Groundwater Remedial Action is protective of human health and the environment, at least every five (5) years as required by Section 121(c) of CERCLA and any applicable regulations. In addition, the Settling Generator Defendants shall evaluate the efficiency of the Groundwater Remedial Action based upon periodic collection of data as set forth in the OUI ROD and the OUI ROD Amendment.

57. EPA Selection of Further Response Actions. If EPA

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

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

59. Settling Generator Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Generator Defendants shall undertake such further response actions under this Consent Decree (1) to the extent that the reopener conditions in Paragraph 134 or Paragraph 135 are satisfied; and (2) if such further response actions involve groundwater capture, containment, or remediation; monitoring of groundwater, surface water, or sediments, or installation of filtration systems and monitoring of residential wells. Although the United States reserves its rights to use its enforcement authorities to seek to

have the Settling Generator Defendants and other parties perform other work, the Settling Generator Defendants shall not be required under this Paragraph to perform such further actions if they pertain to sediment or surface water remediation other than monitoring, or to perform Landfill Cap Work. Settling Generator Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 134 or Paragraph 135 are satisfied, (2) EPA's determination that the Groundwater Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Groundwater Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Section XXI (Dispute Resolution), Paragraph 120.

60. Submissions of Plans. If Settling Generator Defendants are required to perform the further response actions pursuant to the foregoing Paragraph, they shall submit a plan for such Work to EPA for approval in accordance with the procedures set forth in Section VII (Performance of the Groundwater Remedial Action by Settling Generator Defendants) and with Section XII (EPA Approval of Plans and Other Submissions) and shall implement

the plan approved by EPA in accordance with the provisions of this Consent Decree.

IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

61. While conducting all sample collection and analysis activities required by this Consent Decree, the Settling Generator Defendants shall implement quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (US EPA Quality Assurance Management Staff: August 1994) (EPA QA/R-5); EPA NEIC Policies and Procedures Manual (May 1986) (EPA 330/978-001-R); National Functional Guidelines for Inorganic Data Review (EPA 540/R-94/013) and Modifications to the National Functional Guidelines for Inorganic Data Review (EPA Region III: April 1993); National Functional Guidelines for Organic Data Review (EPA 540/R-94/012) and Modifications to the National Functional Guidelines for Organic Data Review (EPA Region III: September 1994); "Region III Innovative Approaches to Data Validation", (EPA Region III: September 1994); "Innovative Approaches for Validation of Organic and Inorganic Data - Standard Operating Procedures"(EPA Region III: June 1995); "Data Quality Objectives Process for Superfund," (EPA 540/R-93-071: September 1994); and subsequent amendments to

such guidelines upon notification by EPA to Settling Generator Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Generator Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, an amendment to the OUI Quality Assurance Project Plan ("QAPP") for the Groundwater Remedial Action that is consistent with the NCP and the guidance documents cited above. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Generator Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Generator Defendants in implementing this Consent Decree. In addition, Settling Generator Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Generator 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.

Settling Generator Defendants shall submit to EPA the selected laboratory's(ies') Quality Assurance Program Plan (QAPP) and their qualifications, which shall include, at a minimum, previous certifications, Performance Evaluation (PE) results, equipment lists and personnel resumes. Settling Generator Defendants shall ensure that all laboratories used for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Generator Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA. At the request of EPA, Settling Generator Defendants shall conduct one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the QAPP. Auditors shall conduct lab audits during the time the laboratory(ies) is analyzing samples collected pursuant to this Consent Decree. The lab audit shall be conducted according to procedures available from the QA Branch. Audit reports shall be submitted to the EPA Project Coordinator and the State Project Coordinator within fifteen (15) days of completion of the audit. The Settling Generator Defendants shall report serious deficiencies, including all those which adversely impact data

quality, reliability or accuracy, and take action to correct such deficiencies within twenty-four (24) hours of the time the Settling Generator Defendants knew or should have known of the deficiency.

62. Upon request, the Settling Generator Defendants shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Settling Generator Defendants shall notify EPA and the State not less than 30 days in advance of any sample collection activity unless shorter notice is agreed to by EPA and the State. In addition, EPA and the State shall have the right to take any additional samples that they deem necessary. Upon request, EPA and the State shall allow the Settling Generator Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiffs' oversight of the Settling Generator Defendants' implementation of the Groundwater Remedial Action.

63. Settling Generator Defendants shall submit to EPA and the State copies of the validated results of all sampling and/or tests or other data, validated as required by the approved Field Sampling Plan, SAP, or QAPP, obtained or generated by or on behalf of Settling Generator Defendants with respect to the implementation of this Consent Decree unless EPA and the State

agree otherwise.

64. Notwithstanding any provision of this Consent Decree, the United States and the State hereby retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, HSCA, and any other applicable statutes or regulations.

X. ACCESS AND INSTITUTIONAL CONTROLS

65. In the UAO, EPA ordered Keystone Sanitation Company, Inc., and Kenneth and Anna Noel, inter alia, to provide access to their property at the Site to EPA and its representatives for purposes of conducting any activity required by or related to the UAO and the OU1 ROD. Subject to Settling Generator Defendants' agreement herein to indemnify EPA, EPA hereby designates the Settling Generator Defendants as its representatives solely for the purpose of obtaining access to property owned by Keystone Sanitation Company, Inc., and Kenneth and Anna Noel, as needed to perform any activity required by or related to this Consent Decree, the UAO, the OU1 ROD, and the OU1 ROD Amendment upon issuance of that Amendment and EPA's modification of the UAO or agreement for access with Keystone Sanitation Company, Inc. or the Noels. To the extent Settling

Generator Defendants are otherwise provided access to the Site or to any other property to which access is required for the implementation of this Consent Decree, they shall provide the United States, the State, and their representatives, including EPA and its contractors, access at all reasonable times for the purposes of conducting any activity related to this Consent Decree, including, but not limited to:

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

66. 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 Generator Defendants, Settling Generator Defendants shall use best efforts to secure from such persons access for Settling Generator Defendants, as well as for the United States, the State, and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. (This obligation does not apply, however, where the party owning the property to which access is required is a potentially responsible party at the Site). If any access required to complete the Groundwater Remedial Action is not obtained within forty-five (45) days of the date of lodging of this Consent Decree, or within forty-five (45) days of the date EPA notifies the Settling Generator Defendants in writing or Settling Generator Defendants identify that additional access beyond that previously secured is necessary, Settling Generator Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Settling Generator Defendants have taken to attempt to obtain access. The United States or the State may, as they deem

appropriate, assist Settling Generator Defendants in obtaining access. Settling Generator Defendants shall reimburse the United States or the State, in accordance with the procedures in Section XVII (Reimbursement of Response Costs and Natural Resource Damages) for all costs incurred by the United States in obtaining access.

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

XI. REPORTING REQUIREMENTS

68. In addition to any other requirement of this Consent Decree, Settling Generator Defendants shall submit to EPA and the State five (5) copies each of written bi-monthly (i.e., every other month) progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous period; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Generator Defendants or their contractors or agents in the previous period; (c) identify all Work plans, plans, and other deliverables required by this

Consent Decree completed and submitted during the previous period; (d) describe all actions, including, but not limited to, data collection and implementation of Work plans, which are scheduled for the next period; 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 Groundwater Remedial Action, 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 Generator 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 period. Settling Generator Defendants shall submit these progress reports to EPA by the tenth day of each alternate month following the lodging of this Consent Decree until EPA notifies the Settling Generator Defendants pursuant to Paragraph 91 of Section XV (Certifications of Completion). If requested by EPA or the State, the Settling Generator Defendants shall also provide briefings for EPA and the State to discuss the

progress of the Groundwater Remedial Action.

69. The Settling Generator Defendants shall notify EPA of any change in the schedule described in the progress reports for the performance of any activity, including, but not limited to, implementation of Work plans, no later than seven (7) days prior to the performance of the activity. Notwithstanding the foregoing, the Settling Generator Defendants shall notify EPA of any change in the schedule described in the progress reports for the performance of data collection no later than thirty (30) days prior to the performance of such activity.

70. Upon the occurrence of any event during performance of the Groundwater Remedial Action that Settling Generator 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 Generator Defendants shall 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 EPA Region III Hotline at (215) 566-3255. These reporting requirements are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

71. Within twenty (20) days of the onset of such an event, Settling Generator Defendants shall furnish to the United States a written report, signed by the Settling Generator Defendants' Project Coordinator setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Generator Defendants shall submit a report setting forth all actions taken in response thereto.

72. Settling Generator Defendants shall submit to EPA seven (7) copies of all plans, reports, and data required by the Groundwater Remedial Design, the Amended Groundwater Remedial Action Work Plan, or any other approved plans in accordance with the schedules set forth in such plans. EPA shall place two copies of such plans, reports and data in each of the two document repositories. Settling Generator Defendants shall simultaneously mail or otherwise provide two copies of such plans, reports and data to PADEP.

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

Authorized Representative.

XII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

74. 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 the Settling Generator Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Generator Defendants at least one notice of deficiency and an opportunity to cure within twenty-one (21) days, or such other time as specified by EPA in the notice, except where to do so would cause serious disruption to the Groundwater Remedial Action, or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate to EPA a bad faith lack of effort to submit an acceptable deliverable. In addition, to the extent the Settling Generator Defendants' submission of the Amendment to the Groundwater Remedial Design includes cost estimates and

identification of Additional Work, EPA will respond with the information set forth in Section VI.

75. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 74(a), (b), or (c), Settling Generator Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXI (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 74(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXII (Stipulated Penalties).

76. Upon receipt of a notice of disapproval pursuant to Paragraph 74(d), Settling Generator Defendants shall, within fourteen (14) days, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXII, (Stipulated Penalties) shall accrue during the fourteen (14) day period, but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided

in Paragraphs 74 and 75.

77. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 74(d), Settling Generator 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 Generator Defendants of any liability for stipulated penalties under Section XXII (Stipulated Penalties).

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

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

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

80. 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

81. The EPA Project Coordinator and Alternate Project Coordinator for this Site are:

EPA Project Coordinator:

Ruth Scharr [3HS21]
U.S. Environmental Protection Agency
841 Chestnut Building

Philadelphia, PA 19107
(215) 566-3191 (phone)
(215) 566-3001 (telefax)

EPA Alternate Project Coordinator:

Chris Corbett [3HS22]
U.S. Environmental Protection Agency
841 Chestnut Building
Philadelphia, PA 19107
(215) 566-3220 (phone)
(215) 566-3001 (telefax)

Settling Generator Defendants have designated de maximis, inc. as their Project Coordinator. If a Project Coordinator initially designated is changed, Settling Generator Defendants shall utilize the procedures set forth in Section VII, Paragraphs 36 through 38, to advise EPA and to obtain acceptance or disapproval of EPA. The Settling Generator Defendants' Project Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Groundwater Remedial Action. The Settling Generator Defendants' Project Coordinator shall not be an attorney for any of the Settling Generator Defendants in this matter. The Settling Generator Defendants' Project Coordinator may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

82. Plaintiffs 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 and Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Groundwater Remedial Action required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

83. EPA's Project Coordinator and the Settling Generator Defendants' Project Coordinator will confer, at a minimum, on a monthly basis.

**XIV. ASSURANCE OF ABILITY TO COMPLETE GROUNDWATER
REMEDIAL ACTION**

84. Prior to entry of this Consent Decree, Settling

Generator Defendants shall establish a trust fund in the amount of \$5.6 million (the "Trust Fund"). Upon completion of the procedures set forth in Section VI concerning Additional Work, Settling Generator Defendants shall increase the funds in the Trust Fund by their share of the projected cost of any Additional Work they are obligated to perform as provided in Section VI. Settling Generator Defendants have provided a copy of the Trust Agreement to EPA, which is attached as Appendix E.

85. To the extent that the United States determines that the security established in Paragraph 84 above is insufficient, it may require, and the Settling Generator Defendants shall implement within thirty (30) days of EPA's notice, additional security in the form of:

(a) A surety bond guaranteeing performance of the Groundwater Remedial Action;

(b) One or more irrevocable letters of credit equaling the total estimated cost of the Groundwater Remedial Action;

(c) A guarantee to perform the Groundwater Remedial Action by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Generator Defendants; or

(d) A demonstration that one or more of the Settling Generator Defendants satisfy the requirements of 40 C.F.R. § 264.143(f) (for these purposes, the reference in 40 C.F.R. § 264.143(f) to the "sum of current closure and post closure costs estimates and current plugging and abandonment cost estimates" shall mean the amount of financial security required in this Section).

86. EPA has reviewed the Trust Agreement and related documents and acknowledges that the Trust Fund upon lodging currently meets the financial security required pursuant to this Consent Decree. EPA recognizes that the Settling Generator Defendants plan to finance the Groundwater Remedial Action from the funds in the Trust Fund. The financial security required under Paragraphs 84 and 85 above, shall be maintained in an amount sufficient to cover the future costs of the Groundwater Remedial Action by the Settling Generator Defendants until EPA agrees that the Groundwater Remedial Action has been completed and issues a Certification of Completion in accordance with Paragraph 91.

87. To the extent Settling Generator Defendants seek to demonstrate their ability to complete the Groundwater Remedial Action by means of a Trust Fund, their Project Manager shall

submit sworn statements annually on the anniversary of the effective date of this Decree certifying that: (1) the funds in the Trust Account exceed the projected estimated cost to complete the remaining Groundwater Remedial Action; (2) the Settling Generator Defendants are not aware of any reasons the funds in the Trust Fund might be unable to meet the payment obligations under this Consent Decree; and (3) the Trust Fund is not encumbered or obligated for any other purposes than completion of the Groundwater Remedial Action.

88. If the Settling Generator Defendants seek to demonstrate the ability to complete the Groundwater Remedial Action through a guarantee by a third party pursuant to Paragraph 85(c) of this Consent Decree, Settling Generator Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Generator Defendants seek to demonstrate their ability to complete the Groundwater Remedial Action by means of the financial test or the corporate guarantee pursuant to Paragraph 85(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, after a reasonable opportunity for review and comment by the State, determines at

any time that the financial assurances provided pursuant to this Section are inadequate, Settling Generator Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 85 of this Consent Decree. Settling Generator Defendants' inability to demonstrate financial ability to complete the Groundwater Remedial Action shall not excuse performance of any activities required under this Consent Decree.

89. Settling Generator Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Generator Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XV. CERTIFICATIONS OF COMPLETION

90. Completion of the Groundwater Remedial Action. Within ninety (90) days after Settling Generator Defendants conclude that the Groundwater Remedial Action has been completed and the Groundwater Performance Standards have been attained, Settling Generator Defendants shall schedule and conduct a pre-

certification inspection to be attended by Settling Generator Defendants and the EPA. If, after the pre-certification inspection, the Settling Generator Defendants still believe that the Groundwater Remedial Action has been completed and the Groundwater 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 (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Generator Defendants' Project Coordinator shall state that the Groundwater 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 Duly Authorized Representative of the Settling Generator Defendants or the Settling Generator 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 the Groundwater Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Groundwater Performance Standards have not been achieved, EPA will notify Settling Generator Defendants in writing of the activities that must be undertaken by Settling Generator Defendants pursuant to this Consent Decree to complete the Groundwater Remedial Action and achieve the Groundwater Performance Standards. EPA may only require Settling Generator Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the Groundwater Remedial Action as that term is defined in Paragraph 48. If such activities are consistent with the scope of the remedy selected in the Groundwater Remedial Action, as that term is defined in Paragraph 48, EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Generator Defendants to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Generator Defendants shall perform all activities described in the notice in accordance with the

specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

91. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Groundwater Remedial Action and after a reasonable opportunity for review and comment by the State, that the Groundwater Remedial Action has been performed in accordance with this Consent Decree and that the Groundwater Performance Standards have been achieved, EPA shall so certify in writing to Settling Generator Defendants. Settling Generator Defendants shall then decontaminate and dismantle the Groundwater Treatment Plant and plug and abandon all appropriate extraction and monitoring wells.

92. Completion of the Final Remedial Action. When the Landfill Cap Remedial Action is completed and any related Landfill Cap Performance Standards have been met, it is contemplated that EPA or any private party performing such work, as the case may be, will schedule and conduct an inspection, prepare a final report, and provide certification by a professional engineer, Project Manager or Remedial Project Manager that the Landfill Cap Remedial Action has been completed.

93. When EPA has issued a Certificate of Completion for both the Groundwater Remedial Action and the Landfill Cap Remedial Action, and ascertained that all Performance Standards at the Site have been met, EPA shall issue a Certificate of Completion of the Final Remedial Action. This certification shall be issued as part of, or concurrently with, the latter of the Certificate of Completion of the Groundwater Remedial Action or the Certificate of Completion of the Landfill Cap Remedial Action, and shall constitute the Certification of Completion of the Final Remedial Action for purposes of this Consent Decree, including but not limited to, Section XXIII (Covenants Not to Sue by the United States and the State). Certification of Completion of the Final Remedial Action shall not affect Settling Generator Defendants' obligations under this Consent Decree.

94. The State will provide its own certification of completion of the remedial action pursuant to HSCA for purposes of Section XXIII (Covenants Not to Sue by United States and the State), Paragraph 136, that contains the State's covenant not to sue when it determines that the requirements of HSCA have been met.

XVI. EMERGENCY RESPONSE

95. In the event of an action or occurrence during the

performance of the Groundwater Remedial Action which causes or threatens a release of Waste Materials from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Generator Defendants shall, subject to Paragraph 96, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Generator Defendants shall notify the EPA Region III Hotline at (215) 566-3255.

Settling Generator 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 this Consent Decree. In the event that the Settling Generator Defendants fail to take appropriate response action to address the emergency as required by this Section, and EPA or the State takes such action instead, Settling Generator Defendants shall reimburse EPA, or the State as the case may be, all costs of the response action not inconsistent with the NCP pursuant to Section

XVII (Reimbursement of Response Costs and Natural Resource Damages).

96. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the State to (a) take all appropriate action 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, or (b) direct or order such action, or 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, subject to Section XXIII (Covenants Not to Sue by United States and the State).

**XVII. REIMBURSEMENT OF RESPONSE COSTS AND
NATURAL RESOURCE DAMAGES**

97. Within thirty (30) days of the effective date of this Consent Decree, Settling Generator Defendants shall pay ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000) to the United States for Natural Resource Damages, in the form of a certified check made payable to "U.S. Department of the Interior" and referencing Account Number 14X5198 and the Keystone Sanitation Landfill Superfund Site. The Settling Generator Defendants shall

forward their payments by certified check by certified mail,
return receipt requested, to:

Chief, Division of Finance
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
Arlington, VA 2203

with a copy to:

Mark Barash
Office of the Regional Solicitor
United States Department of Interior
One Gateway Center
Suite 612
Newton Corner, MA 02158-2868

and shall reference that the payment is for Natural Resource Damages for resources under the trusteeship of DOI with respect to the Keystone Sanitation Landfill Superfund Site. A copy of the check paid pursuant to this subparagraph, and any accompanying transmittal letter, shall be sent to the United States as provided in Section XXVIII (Notices and Submissions).

98. Within thirty (30) days of entry of the Consent Decree, Settling Generator Defendants shall pay to the State \$13,000 as reimbursement of past response costs incurred by the State in connection with the Site, in the form of a certified check or checks made payable to the Hazardous Sites Cleanup Fund in reimbursement of State Past Response Costs. The check(s) should reference the Keystone Sanitation Landfill Site and be

mailed to the attention of Lauree Balsbaugh, Pennsylvania
Department of Environmental Protection, P.O. Box 8471,
Harrisburg, PA 17105-8471.

99. Within thirty (30) days of the effective date of
this Consent Decree, Settling Generator Defendants shall pay
\$30,000 to the State for Natural Resource Damages, in the form of
a certified check made payable to PADEP and referencing the
Keystone Sanitation Landfill Superfund Site. The Settling
Generator Defendants shall forward their payments by certified
check by certified mail, return receipt requested, to:

Lauree Balsbaugh
Pennsylvania Department of Environmental Protection
P.O. Box 8471
Harrisburg, PA 17105-8471

and shall reference that the payment is for Natural Resource
Damages for resources under the trusteeship of PADEP with respect
to the Keystone Sanitation Landfill Superfund Site.

100. Settling Generator Defendants shall reimburse EPA
Hazardous Substance Superfund for all Federal Future Response
Costs as defined in this Consent Decree that are incurred in a
manner not inconsistent with the National Contingency Plan. The
United States will send Settling Generator Defendants a bill
requiring reimbursement for Federal Future Response Costs which

bill shall include a cost summary, setting forth direct and indirect costs incurred by EPA, DOJ, and their contractors. Settling Generator Defendants may request a bill on an annual basis. Settling Generator Defendants shall make all payments within thirty (30) days of Settling Generator Defendants' receipt of any bill requiring payment, except as otherwise provided in Paragraph 102. The Settling Generator Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #03L9, the DOJ case number 90-11-2-656A, and the name and address of the party making payment. The Settling Generator Defendants shall send the check(s) to United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, and shall send copies of the check(s) to the United States as specified in Section XXVIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

101. Settling Generator Defendants shall reimburse the State for all State Future Response Costs as defined in this Decree that are incurred not inconsistent with the National

Contingency Plan. The State will send Settling Generator Defendants a bill requiring reimbursement for State Future Response Costs which bill shall include a cost summary, setting forth direct and indirect costs incurred by the State and its contractors. Settling Generator Defendants may request such bills on an annual basis. Settling Generator Defendants shall make all payments within thirty (30) days of Settling Generator Defendants' receipt of any bill requiring payment, except as otherwise provided in Paragraph 102. The Settling Generator Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's checks made payable to the "Hazardous Sites Cleanup Fund" and referencing the Keystone Sanitation Landfill Superfund Site and the name and address of the party making payment. The Settling Generator Defendants shall send the check(s) to Lauree Balsbaugh, Pennsylvania Department of Environmental Protection, P.O. Box 8471, Harrisburg, PA 17105-8471.

102. Settling Generator Defendants may contest payment of any State or Federal Future Response Costs under Paragraphs 100 and 101 if they determine that the costs involved do not constitute Future Response Costs as defined in this Consent Decree, or that the United States, or the State, as the

case may be, has made an accounting error or if they allege that a cost item that is included represents costs that are incurred in a manner inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVIII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Generator Defendants shall within the thirty (30) day period pay all uncontested Future Response Costs to the United States or the State, as appropriate, in the manner described in Paragraphs 100 or 101. Simultaneously, the Settling Generator Defendants shall establish an interest-bearing escrow account in a federally-insured, duly chartered, bank in the State of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Generator Defendants shall send to the United States or the State, as provided in Section XXVIII (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, the Settling Generator Defendants shall initiate the Dispute Resolution procedures in Section XXI (Dispute Resolution). If the United States or the State prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Generator Defendants shall pay the sums due (with accrued interest) to the United States or the State, if State costs are disputed, in the manner described in Paragraphs 100 or 101. If the Settling Generator Defendants prevail concerning any aspect of the contested costs, the Settling Generator Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States, or the State, if State costs are disputed, in the manner described in Paragraphs 100 or 101; Settling Generator Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes

regarding the Settling Generator Defendants' obligation to reimburse the United States or the State for its Future Response Costs.

103. In the event that the payments required by Paragraphs 97, 98 or 99 are not made within thirty (30) days of the effective date of this Consent Decree or the payments required by Paragraphs 100 or 101 are not made within thirty (30) days of the Settling Generator Defendants' receipt of the bill, Settling Generator Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Generator Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Generator Defendants' failure to make timely payments under this Section. The Settling Generator Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 100 or 101.

XVIII. PAYMENTS TO SETTLING GENERATOR DEFENDANTS

104. EPA will release to the Settling Generator Defendants as set forth in this Section: (i) the 2/3 Payment for Additional Work, if any, that EPA will make pursuant to Section

VI of this Consent Decree; and (ii) the proceeds from the Borough of Lemoyne de minimis settlement, including interest accrued under the procedures specific to the accrual of interest under EPA Special Accounts, with the exception of \$70,376.00 ("De Minimis Proceeds"). The proceeds that are being paid by the City of York in installments will be distributed to the Settling Generator Defendants after EPA determines that the Milestones described below have been attained and upon receipt of the City of York's installments payable from the Borough of Lemoyne de minimis settlement.

105. EPA will release (i) seventy percent (70%) of the De Minimis Proceeds, or the costs certified by the Settling Generator Defendants pursuant to Paragraph 107, whichever is less, and (ii) the 2/3 Payment in full, except for any disputed amounts, within sixty (60) days of EPA's certification, pursuant to Paragraph 107, of the attainment by the Settling Generator Defendants of the following measures, hereinafter known as the "70% Milestones":

- (a) The Groundwater Treatment Plant is constructed and capable of discharge of effluent that is in substantial compliance with NPDES permit requirements. The substantial compliance referred to in this Paragraph applies only to the release of funds pursuant to this Section and in no way constitutes a waiver or release of NPDES enforcement authority by the State.

- (b) The initial groundwater extraction wells required in the Amended Groundwater Remedial Design are installed, and are capable of extracting groundwater and delivering it to the Groundwater Treatment Plant;
- (c) Filters have been installed on residential wells in homes that have accepted installation.

EPA will pay the balance found to be owed, if any, of any disputed amount of the 2/3 Payment within sixty (60) days of resolution of the dispute pursuant to Section XXI.

106. EPA will release the balance of the De Minimis Proceeds and any accrued interest, within sixty days of EPA's certification, pursuant to Paragraph 107, of the attainment by the Settling Generator Defendants of the following measures, hereinafter known as the "30% Milestones":

- (a) At least two sequential quarterly capture zone analyses demonstrate that the extraction wells capture and contain groundwater contaminated in excess of Groundwater Performance Standards.
- (b) Discharges from the Groundwater Treatment Plant are meeting effluent limits in its NPDES Permit.

107. Attainment of Milestones Under this Section:

Settling Generator Defendants shall follow the procedures in this Paragraph to obtain certification from EPA that each of the 70% and 30% Milestones described in the foregoing Paragraphs have been attained, as required prior to the payments described in this Section. Within ninety (90) days after Settling Generator

Defendants conclude that the applicable Milestones have been attained as set forth in the foregoing Paragraphs, they shall schedule and conduct a pre-certification inspection to be attended by Settling Generator Defendants and the EPA. If, after the pre-certification inspection, the Settling Generator Defendants still believe that the applicable Milestones have been attained, and that the Settling Generator Defendants have demonstrated that the requirements of the foregoing Paragraphs have been met, they shall submit a written report requesting certification of attainment to EPA for approval, with a copy to the State, pursuant to Section XII (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Generator Defendants' Project Coordinator shall state that the applicable Milestones have been attained 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 and, for certification of attainment of the 30% Milestone, hydrogeologic data signed by a registered or licensed hydrogeologist or equivalent professional, demonstrating the capture and containment of groundwater with contaminants exceeding Groundwater Performance Standards. The report shall

also contain certification of the total costs expended in implementing the Groundwater Remedial Action through the date of the report. Such costs may include the costs of Remedial Design expended prior to lodging of the Consent Decree but shall be limited to direct costs expended and exclusive of attorneys fees or costs, costs related to litigation, settlement, or responsible parties search activities, and other internal or transaction costs. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Generator Defendant or the Settling Generator 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 the applicable Milestones or any portion thereof have not been attained in accordance with this Consent Decree, EPA will notify Settling Generator Defendants in writing of the activities that

must be undertaken by Settling Generator Defendants pursuant to this Consent Decree to attain the applicable Milestones. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Generator Defendants to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Generator Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution). If EPA concludes, based on the initial or any subsequent report requesting certification of attainment of the applicable Milestone and after a reasonable opportunity for review and comment by the State, that the applicable Milestones have been attained in accordance with this Consent Decree, EPA shall so certify in writing to Settling Generator Defendants.

108. Payment shall be made by wire transfer or by check made payable to the "Remedial Cost Fund Account" sent by certified mail, return receipt requested, to the following:

The Bank of Hanover & Trust Company
33 Carlisle Street
Hanover, PA 17331

The transmittal shall reference account number [to be provided] and a copy shall be sent to the Settling Generator Defendants' Project Coordinator.

109. By their acceptance of the De Minimis Proceeds and any 2/3 Payment, the Settling Generator Defendants agree that in the event the United States takes over the Groundwater Remedial Action pursuant to Section XXIII, Paragraph 142, or for other reasons related to Settling Generator Defendants' failure to perform, the Settling Generator Defendants shall:

(a) Repay to the United States the portion of any 2/3 Payment by the United States for Additional Work that represents the cost of any such Additional Work that has not been performed by the Settling Generator Defendants; and

(b) Repay the De Minimis Proceeds as follows:

i. if the United States takes over the Groundwater Remedial Action on or before one year from Certification of Attainment of the 30% Milestone, Settling Generator Defendants shall repay 100 % of the De Minimis Proceeds paid pursuant to this Section XVIII;

ii. if the United States takes over the Groundwater Remedial Action after one year but within five years of Certification of Attainment of the 30% Milestone, Settling

Generator Defendants shall repay 75 % of the De Minimis Proceeds paid pursuant to this Section XVIII; and

iii. if the United States takes over the Groundwater Remedial Action after five years but within ten years of Certification of Attainment of the 30% Milestone, Settling Generator Defendants shall repay 50 % of the De Minimis Proceeds paid pursuant to this Section XVIII.

The United States, in the event it takes over the Groundwater Remedial Action, reserves all its other rights and remedies, under this Decree or otherwise.

XIX. INDEMNIFICATION AND INSURANCE

110. a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Settling Generator Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Generator Defendants shall indemnify, save, and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Generator 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 Generator Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Generator Defendants agree to pay the United States, or the State as the case may be, all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States and the State based on negligent or other wrongful acts or omissions of Settling Generator Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Generator Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Generator Defendants nor any such contractor shall be considered an agent of the United States or the State. The Settling Generator Defendants shall have no obligation to indemnify, save or hold the United States or the State harmless from any claim or cause of action, or to pay the United States

and the State any costs incurred in defending, litigating or settling any claim or cause of action, if such claim or cause of action arises solely out of the Settling Generator Defendants' performance of the Groundwater Remedial Action in conformance with the terms of this Consent Decree.

b. The United States and/or the State shall give Settling Generator Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 110.a., and shall consult with Settling Generator Defendants prior to settlement of any such claim.

111. Settling Generator Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Generator Defendants and any person for performance of Groundwater Remedial Action on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Generator Defendants shall indemnify and hold harmless the United States and the State 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 Generator Defendants and any person for performance of Groundwater Remedial Action on or relating to the Site, including, but not limited to, claims on account of construction delays.

112. No later than fifteen (15) days before commencing any Groundwater Remedial Action, Settling Generator Defendants shall secure, or ensure that their contractors collectively secure, and shall maintain until the first anniversary of EPA's Certifications of Completion of the Remedial Action pursuant to Paragraph 91 of Section XV (Certifications of Completion) comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of \$500,000, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, Settling Generator 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 Groundwater Remedial Action on behalf of Settling Generator Defendants in furtherance of this Consent Decree. Prior to commencement of the Groundwater Remedial Action under this Consent Decree, Settling Generator

Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Generator Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Generator 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 Generator Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Settling Generator Defendants may satisfy the provisions of this Paragraph if they submit to EPA for approval one of the financial assurance mechanisms of Section XIV (Assurance of Ability to Complete Groundwater Remedial Action) in at least the amounts stated in this Paragraph demonstrating that Settling Generator Defendants are able to pay any claims arising out of Settling Generator Defendants' performance of their obligations under this Consent Decree. Such financial assurance mechanism shall meet all of the requirements of Section XIV (Assurance of Ability to Complete Groundwater Remedial Action). If Settling Generator Defendants seek to

utilize the mechanisms set forth in Section XIV (Assurance of Ability to Complete Groundwater Remedial Action) to satisfy the provisions of this Paragraph, they must demonstrate an ability to pay the amounts required under this Paragraph, above and beyond that required by the obligations of Section XIV (Assurance of Ability to Complete Groundwater Remedial Action).

XX. FORCE MAJEURE

113. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Generator Defendants, of any entity controlled by Settling Generator Defendants, or of Settling Generator Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Generator Defendants' best efforts to fulfill the obligation. The requirement that the Settling Generator 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 (a) as it is occurring, and (b) 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 Groundwater

Remedial Action, a failure to attain the Performance Standards, or increased costs. "Delay" for purposes of this Section may mean a permanent inability to perform, if Settling Generator Defendants otherwise satisfy the requirements of this Section and demonstrate that the delay is permanent.

114. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Generator Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator within forty-eight (48) hours of when Settling Generator Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Settling Generator 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; the Settling Generator Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Generator Defendants, such event may

cause or contribute to an endangerment to public health, welfare or the environment. The Settling Generator Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Generator Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Generator Defendants shall be deemed to know of any circumstance of which Settling Generator Defendants, any entity controlled by Settling Generator Defendants, or Settling Generator Defendants' contractors knew or should have known.

115. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation.

If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Generator Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Generator Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

116. If the Settling Generator Defendants elect to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Generator 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 Generator Defendants complied with the requirements of Paragraphs 113 and 114, above. If Settling Generator Defendants carry this burden, the delay at issue shall

be deemed not to be a violation by Settling Generator Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XXI. DISPUTE RESOLUTION

117. 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 the Settling Generator Defendants that have not been disputed in accordance with this Section.

118. 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 twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

119. 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 twenty (20) days after the conclusion of the informal negotiation period, Settling Generator 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 the Settling Generator Defendants. The Statement of Position shall specify the Settling Generator Defendants' position as to whether formal dispute resolution should proceed under Paragraph 120 or Paragraph 121.

b. Within fourteen (14) days after receipt of Settling Generator Defendants' Statement of Position, EPA will serve on Settling Generator 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 shall include a statement as to whether formal dispute resolution should proceed under Paragraph 120 or 121. Within ten (10) days after receipt of EPA's Statement of Position, Settling Generator Defendants may submit a Reply.

c. If there is disagreement between EPA and the

Settling Generator Defendants as to whether dispute resolution should proceed under Paragraph 120 or 121, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Generator 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 120 and 121.

120. 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; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Generator Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be

maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Hazardous Sites Cleanup Division, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 120.a. This decision shall be binding upon the Settling Generator Defendants, subject only to the right to seek judicial review pursuant to Paragraph 120.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 120.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Generator Defendants with the Court and served upon all Parties within thirty (30) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Generator Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Generator Defendants shall have the burden of demonstrating that the decision of the Director of the Hazardous Sites Cleanup Division, EPA Region III, is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 120.a.

121. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Generator Defendants' Statement of Position submitted pursuant to Paragraph 119, the Director of the Hazardous Sites Cleanup Division, EPA Region III, will issue a final decision resolving the dispute. The Director's decision shall be binding on the Settling Generator Defendants unless, within ten (10) days of receipt of the decision, the Settling Generator Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the

schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Generator Defendants' motion.

b. Notwithstanding Paragraph 18 of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

122. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Generator Defendants under this Consent Decree unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 130. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of non-compliance with any applicable provision of this Consent Decree. In the event that the Settling Generator Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Stipulated Penalties).

XXII. STIPULATED PENALTIES

123. Settling Generator Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 124 and 125 to the United States and the State for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX (Force Majeure). "Compliance" by Settling Generator Defendants shall include completion of the activities under this Consent Decree or any Work Plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, 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.

124. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

| <u>Penalty Per Violation</u> <u>Per Day</u> | <u>Period of Noncompliance</u> |
|--|--------------------------------|
| \$ 4,000 | 1st through 14th day |
| 7,500 | 15th through 30th day |
| 10,000 | 31st day and beyond |

b. Failure to comply with requirements of Section VII (Performance of the Groundwater Remedial Action by Settling Generator Defendants), exclusive of Paragraph 36 through 39,

Section VIII (Remedy Review), Section IX (Quality Assurance, Sampling, and Data Analysis), Section XII (EPA Approval of Plans and Other Submissions), and Section XVI (Emergency Response).

125. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

| <u>Penalty Per Violation Per Day</u> | <u>Period of Noncompliance</u> |
|--|--------------------------------|
| \$ 800 | 1st through 14th day |
| 1,000 | 15th through 30th day |
| 2,500 | 30th day and beyond |

b. All requirements of this Consent Decree that are not identified in Paragraph 124(b) of this Consent Decree, including violations of Section VII (Performance of the Groundwater Remedial Action by Settling Generator Defendants), Paragraph 36 through 39.

126. 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, except as otherwise provided herein. Stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XII (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt

of such submission until the date that EPA notifies Settling Generator Defendants of any deficiency; (2) with respect to a decision by the Director of the Hazardous Sites Cleanup Division, EPA Region III, under Paragraph 120.b. or 121.a. of Section XXI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Generator Defendants' reply to EPA's Statement of Position is received until the date that the Director of the Hazardous Sites Cleanup Division, EPA Region III, issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XXI (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.

127. Following EPA's determination that Settling Generator Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Generator Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Generator 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 the Settling Generator Defendants of a violation.

128. Settling Generator Defendants shall pay fifty percent (50%) of the stipulated penalties to the United States and fifty percent (50%) of the penalties to the State. All penalties accruing under this Section shall be due and payable to the United States and to the State within thirty (30) days of the Settling Generator Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Generator Defendants invoke the Dispute Resolution procedures under Section XXI (Dispute Resolution). Payment of the fifty percent (50%) of the penalty due to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 125251-6515, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #03L9, the DOJ Case Number 90-11-2-656A, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the

United States as provided in Section XXVIII (Notices and Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Payment of the 50% due to the State shall be made by certified check, certified mail, return receipt requested, to: Lauree Balsbaugh, Pennsylvania Department of Environmental Protection, P.O. Box 8471, Harrisburg, PA 17105-8471.

129. The payment of penalties shall not alter in any way Settling Generator Defendants' obligation to complete the performance of the Groundwater Remedial Action required under this Consent Decree.

130. Penalties shall continue to accrue as provided in Paragraph 126 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 and the State within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling

Generator Defendants shall pay all accrued penalties determined by the Court to be owed to EPA and the State within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Generator Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States or the State into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the State or to Settling Generator Defendants to the extent that they prevail.

131. a. If Settling Generator Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Generator Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 127 and 128.

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 Generator 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 for any particular violation of this Consent Decree, the United States shall be limited to either demanding stipulated penalties pursuant to this Section XXII of the Consent Decree or to pursuing civil penalties pursuant to Section 122(1) of CERCLA.

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

XXIII. COVENANTS NOT TO SUE BY UNITED STATES AND THE STATE

133. Covenant of the United States: In consideration of the actions that will be performed by the Settling Generator Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 134, 135, 139 and 141 of this Section, the United States covenants not to sue or to take administrative action against Settling Generator Defendants pursuant to Sections 106, 107(a), including federal claims for

natural resource damages, and 113(g) of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613(g), or Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon entry of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certifications of Completion of the Final Remedial Action by EPA pursuant to Paragraph 91 of Section XV ("Certifications of Completion"). These covenants not to sue are conditioned upon the complete and satisfactory performance by the Settling Generator Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Generator Defendants and do not extend to any other persons.

134. United States' Pre-Certification Reservation of Rights. 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 Generator Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Final Remedial Action:

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

and these previously unknown conditions or information together with any other relevant information indicate that the Final Remedial Action is not protective of human health or the environment. For purposes of this Paragraph 134 of this Section XXIII, the information and conditions known to EPA shall include only that information and those conditions set forth in the OUI ROD, the administrative record compiled for that ROD, the OUI ROD Amendment, the administrative record (including the FFS) compiled for that Amendment, all data collected at the Site and the analyses performed thereon and available to EPA as of the date of the OUI ROD Amendment, the documents related to the OUI ROD submitted by the Settling Generator Defendants pursuant to the UAO as of the date of signing of this Consent Decree by the Regional Administrator; and all pleadings, motions, briefs, and submissions (including documents referenced in those pleadings, motions, briefs, and submissions) filed by any parties in this action prior to the date of signing of this Consent Decree by the Regional Administrator.

135. United States' Post-Certification Reservations of Rights. 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 Generator Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Final Remedial Action:

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

and these previously unknown conditions or information together with other relevant information indicates that the Final Remedial Action is not protective of human health or the environment. For purposes of this Paragraph 135 of this Section XXIII, the information and the conditions known to EPA shall include only that information and those conditions set forth in the documents described in Paragraph 134 above, as well as, prior to Certification of Completion of the Final Remedial Action: any subsequent ROD or decision document selecting a remedy at the

Site and the administrative record compiled for that ROD, any post-ROD administrative record, and any information and those conditions set forth in documents in the possession and/or control of EPA acquired prior to the Certification of Completion of the Final Remedial Action.

136. Covenant by the State: With regard to known environmental conditions at the Site, as defined in Paragraph 137 of this Consent Decree, and in consideration of the actions that will be performed and the payment required to be made by the Settling Generator Defendants to the State under the terms of this Consent Decree, and except as specifically provided in Paragraphs 137, 138, 140 and 141 of this Section, the State covenants not to sue or to take administrative action against Settling Generator Defendants for any and all civil liability for the Matters Addressed in this Settlement, including but not limited to, liability for past and future response costs and State Natural Resource Damages, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Sections 701, 702 and 1102 of HSCA, 35 P.S. §§ 6020.701, 6020.702, and 6020.1102, the Pennsylvania Clean Streams Law, 35 P.S. §§ 691.1 et seq., the Pennsylvania Solid Waste Management Act, 35 P.S. §§ 6018.101 et seq., or any other state or federal statutory or common law relating to the

Site. Except with respect to future liability, these covenants shall take effect upon receipt of the payments required to be made to the State for State Past Response Costs and State Natural Resource Damages under Section XVII (Reimbursement of Response Costs) by the Settling Generator Defendants. With respect to future liability, pursuant to Section 706 of HSCA, 35 P.S. § 6020.706, these covenants not to sue become effective when the State determines that the requirements of HSCA have been met and the Site no longer presents a current or currently foreseeable future significant risk to the public health and welfare or the environment, and certifies the completion of the Remedial Action pursuant to Section 706(c) of HSCA, 35 P.S. § 6020.706(c). These covenants are conditioned upon the complete and satisfactory performance by the Settling Generator Defendants of their obligations under this Consent Decree. These covenants extend only to the Settling Generator Defendants and do not extend to any other persons.

137. State's Pre-certification Reservations:

Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, whatever rights the State may have to institute proceedings in this action or in a new action, or to issue an administrative

order seeking to compel Settling Generator Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the State for additional costs of response if, prior to certification of completion of the remedial action by the State pursuant to Section 706(c) of HSCA, 35 P.S. § 6020.706(c):

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

and these previously unknown conditions or information together with any other relevant information indicate that the remedial action is not protective of human health or the environment. For purposes of this Paragraph 137 of this Section XXIII, the information and conditions known to EPA and the State shall include only that information and those conditions set forth in the OU1 ROD, the administrative record compiled for that ROD, the OU1 ROD Amendment, the administrative record (including the FFS) compiled for that Amendment, all data collected at the Site and analyses performed thereon and available to EPA or the State as of the date of the OU1 ROD Amendment, the documents related to the OU1 ROD submitted by the Settling Generator Defendants to EPA or the State pursuant to the UAO Order as of the date of signing

of this Consent Decree by the Regional Administrator and the State; and all pleadings, motions, briefs, and submissions (including documents referenced in those pleadings, motions, briefs, and submissions) filed by any party in this action prior to the date of signing of this Consent Decree by the Regional Administrator and the State; and all data, analyses, reports and any other information provided to or obtained by the State pursuant to its role in regulating the Site pursuant to Pennsylvania law governing municipal or solid waste disposal facilities.

138. State's Post-Certification Reservations.

Notwithstanding any other provision of this Consent Decree, the State reserves, and this Consent Decree is without prejudice to, whatever rights the State may have to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Generator Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the State for additional costs of response only if, subsequent to certification of completion of the remedial action by the State pursuant to Section 706(c) of HSCA, 35 P.S. § 6020.706(c):

- i. conditions at the Site, previously unknown to

EPA and the State, are discovered, or

ii. information, previously unknown to EPA and the State, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicate that the remedial action is not protective of human health or the environment. For purposes of this Paragraph, the information and the conditions known to EPA and the State shall include only that information and those conditions set forth in the documents described in Paragraph 137 above, as well as, prior to Certification of Completion of the Final Remedial Action: any subsequent ROD or similar document selecting a remedy at the Site and the administrative record compiled for that ROD, any post-ROD administrative record and any information and those conditions set forth in documents in the possession and/or control of EPA or the State acquired prior to the Certification of Completion of the Final Remedial Action.

139. Reservations Concerning Natural Resource Damages of the United States: Notwithstanding any other provision of this Decree, the United States, on behalf of its natural resource trustees, reserves the right to institute proceedings against the Settling Generator 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 lodging of this Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources, or (2) information received after the date of lodging of the Decree which, together with other relevant information, indicates that there is injury to, destruction of, or loss of natural resources, of a type that was unknown, or of a magnitude greater than was known to the United States at the date of lodging of this Decree. The information and conditions known to the United States shall also include any potential impact that the pumping of groundwater and the discharge of treated groundwater may have on wetlands, surface water, habitat or other natural or human resources.

140. State Reservations For Natural Resource Damages:

Notwithstanding any other provision of this Decree, the State, as the trustee of the Commonwealth's natural resources, reserves the right to institute proceedings against the Settling Generator 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 State at the date of lodging of this Decree, that result in releases of hazardous substances that

contribute to injury to, destruction of, or loss of natural resources, or (2) information received after the date of lodging of the Decree which, together with other relevant information, indicates that there is injury to, destruction of, or loss of natural resources, of a type that was unknown, or of a magnitude greater than was known to the State at the date of lodging of this Decree. The information and conditions known to the State shall also include any potential impact that the pumping of groundwater and the discharge of treated groundwater may have on wetlands, surface water, habitat or other natural or human resources.

141. Specific Reservations of Rights. The covenants not to sue set forth in this Section do not pertain to any matters other than those expressly specified therein. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Generator Defendants with respect to all other matters, including but not limited to, the following:

- a. liability for the failure of Settling Generator Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or

- future disposal, release, or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;
- c. criminal liability;
 - d. liability for past, present or future violations of federal law other than liability resolved by this Consent Decree;
 - e. liability, prior to Certification of Completion of the Final Remedial Action, for additional response actions that EPA determines are necessary to achieve Groundwater Performance Standards, exclusive of Landfill Cap Work, but that cannot be required pursuant to Paragraph 47 through 50 (Modification of the Groundwater Remedial Action).

142. Groundwater Remedial Action Takeover. . In the event EPA determines that Settling Generator Defendants have ceased implementation of any portion of the Groundwater Remedial Action, are seriously or repeatedly deficient or late in their performance of the Groundwater Remedial Action, or are implementing the Groundwater Remedial Action in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the

Groundwater Remedial Action as EPA determines necessary.

Settling Generator Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution), Paragraph 120, to dispute EPA's determination that takeover of the Groundwater Remedial Action is warranted under this Paragraph. Costs incurred by the United States in performing the Groundwater Remedial Action pursuant to this Paragraph shall be considered Future Response Costs that Settling Generator Defendants shall pay pursuant to Section XVII (Reimbursement of Response Costs and Natural Resource Damages).

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

XXIV. COVENANTS NOT TO SUE BY SETTLING GENERATOR DEFENDANTS

144. Upon entry of this Consent Decree, and subject to the reservations in Paragraph 145, Settling Generator Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, the State, or their contractors or employees, 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 Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9611, 9612 or 9613, or any other provision of law, any claim against the United States and the State, including any department, agency or instrumentality of the United States and the State under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

145. The Settling Generator Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code; and the State for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States and the State while acting within the scope of his or her office or employment under circumstances where the United States or the State, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a

claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Generator Defendants' plans or activities. The foregoing reservations in this Paragraph apply only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

146. For Matters Addressed in the Settlement, upon entry of this Consent Decree, Settling Generator Defendants agree to release and waive all claims or causes of action under Sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, Sections 7002 of RCRA, 42 U.S.C. § 6972, and Sections 701 and 705 of HSCA, 35 P.S. §§ 6020.701 and 6020.705, or claims for similar relief, that they may have, including for contribution, against any person or party; except that in the event the United States selects, or enters into a settlement for performance of, a remedial alternative for source control other than the landfill cap selected in the OUI ROD, the Settling Generator Defendants shall retain their claims against the Owner/Operator Defendants.

147. For matters relating to the Site but not addressed in this settlement, including claims under Section XXIII, Paragraphs 134, 135, 137, 138, 139 and 140, upon entry of this Consent Decree, Settling Generator Defendants agree to forego, release and waive all claims or causes of action under Sections 106, 107 and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607, and 9613, Sections 7002 of RCRA, 42 U.S.C. § 6972, and Sections 701 and 705 of HSCA, 35 P.S. §§ 6020.701 and 6020.705, or claims seeking similar relief, that they may have, including for contribution, only against persons falling within either of the following subparagraphs:

a. any person (i) whose liability to Settling Generator Defendants with respect to the Site is based solely on Section 107(a)(3) or (4) of CERCLA, 42 U.S.C. § 9607(a)(3) or (4), (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, at the Site of only Municipal Solid Waste or Sewage Sludge owned by such person, and (iii) whose volume of Municipal Solid Waste or sewage sludge disposed of at the Site does not exceed 18,000 cubic yards;

b. any person (i) whose liability to Settling Generator Defendants with respect to the Site is based solely on

Section 107(a)(3) or (4) of CERCLA, 42 U.S.C. § 9607(a)(3) or (4) and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, at the Site of 1800 cubic yards or less, of which not more than 55 gallons or 100 pounds consisted of materials containing hazardous substances derived from commercial, institutional, or industrial processes or activities (except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site) and the balance consisted of Municipal Solid Waste or Sewage Sludge.

148. The United States, and the State to the extent the State exercises its reservation of rights, reserves the right to enforce the waivers and releases in Paragraphs 146 and 147 of this Section under the terms of this Consent Decree. The Settling Generator Defendants agree, and the Court by entering this Consent Decree finds, that the specified claims against parties that meet the criteria in Paragraphs 146 and 147 of this Section are barred. A party sued by the Settling Generator Defendants may assert as a defense or bar to such an action that the party meets the criteria in the Paragraphs 146 and 147 and, in the event the Court determines that they do satisfy those

criteria, the claims shall be dismissed.

149. Upon entry of this Consent Decree, Settling Generator Defendants agree that, for Matters Addressed in the Settlement, they shall: (1) agree not to challenge, contest, or submit comments upon any other consent decrees entered into by the United States and any other parties to this action, including the Owner/Operator Defendants, to the extent such settlements pertain to the Matters Addressed in this Settlement; provided, however, that the Settling Generator Defendants reserve their rights to challenge, contest, or submit comments upon any settlement between the United States and any Owner/Operator Defendant(s) in which the United States agrees that the Owner/Operators may perform a remedial alternative for source control other than the landfill cap and related measures that EPA selected in the OU1 ROD; (2) withdraw with prejudice their objections to the de micromis settlements pending before the Court at the time they signed this Consent Decree; and (3) withdraw with prejudice any pending challenges to the EPA-selected remedies at the Site.

150. These covenants shall not bar Settling Generator Defendants from asserting against the United States or any other party not within the scope of Paragraphs 146 and 147 claims they

would otherwise have that arise in the future out of an action taken or claim made by EPA, the United States or the State pursuant to the authority reserved in Section XXIII, Paragraphs 134, 135, 137, 138, 139 and 140 of this Consent Decree. 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).

XXV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

151. Except as provided in Section XXIV, Paragraphs 146 and 147, 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 Consent Decree may have under applicable law. Except to the extent provided in Section XXIV, Paragraphs 146 and 147, 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.

152. With respect to claims for contribution by any

person, under any state or federal law or common law against Settling Generator Defendants for matters addressed in this Consent Decree, the Parties hereto agree, and the Court by entering this Decree finds, that the Settling Generator Defendants are entitled to such protection from contribution actions or claims as is provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2) for Matters Addressed in this Settlement.

153. a. Subject to the State's reservation of rights in Paragraphs 137, 138 and 140, each of the Settling Generator Defendants is a person that has resolved its liability to the State for the Site and is entitled to protection from claims for contribution regarding Matters Addressed in the Settlement, as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and Section 705(c)(2) of HSCA, 35 P.S. § 6020.705(c)(2). This contribution protection is intended to be as broad as possible under CERCLA and HSCA for the Matters Addressed in the Settlement.

b. Each of the Settling Generator Defendants acknowledges that the State has no obligation to defend it in any suit, demand, or claim for contribution for any matters arising from the release and threatened release of hazardous substances at the Site, arising out of the response actions at the Site, or

arising out of this Consent Decree.

154. The Settling Generator Defendants agree not to assert any additional contribution actions, pursuant to Section 107 or 113 of CERCLA, for the Matters Addressed in this Settlement for which they receive contribution protection. Settling Generator Defendants further agree that, with respect to any suit or claim for contribution pursuant to CERCLA brought by them for matters not addressed in this Consent Decree but relating to the Site, they will notify the United States in writing no later than sixty days prior to initiation of such suit or claim. The Settling Generator Defendants also agree that with respect to any suit or claim for contribution brought against them pursuant to CERCLA for matters related to this Site they will notify in writing the United States within ten (10) days of service of the complaint. In addition, Settling Generator Defendants shall notify the United States within ten (10) of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial on matters related to this Consent Decree. Settling Generator Defendants acknowledge that the United States has no obligation to defend them in any suit or claim for contribution.

155. In any subsequent administrative or judicial

proceeding initiated by the United States and/or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Generator 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 and/or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIII (Covenants Not to Sue by Plaintiff).

156. No Admissions. Nothing in this Consent Decree shall be construed as an admission of any fact, law, or liability on the part of Settling Generator Defendants. The United States, the State, and the Settling Generator Defendants agree that neither this Consent Decree, nor any part hereof, nor the entry into, nor any performance under this Consent Decree, by any of the Settling Generator Defendants, shall constitute or be construed as a finding or admission or acknowledgment of the factual or legal allegations contained in this Consent Decree or in the Complaints, or any liability, fault, wrongdoing, or

evidence of such, or an admission or violation of any law, rule, regulation, or policy, by any Settling Generator Defendant. This Consent Decree shall not be admissible into evidence in any proceeding for the purpose of establishing any liability on the part of Settling Generator Defendants relating to the Site, including without limitation any liability pursuant to the Unilateral Administrative Order, provided, however, that this Consent Decree may be offered into evidence by any party hereto in a proceeding to enforce the terms, conditions, or effect of this Consent Decree.

XXVI. ACCESS TO INFORMATION

157. Settling Generator Defendants shall, upon request, provide to EPA and the State 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 Groundwater Remedial Action. Settling Generator Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony,

their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Groundwater Remedial Action.

158. a. Settling Generator Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be 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 Generator 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 the Settling Generator Defendants.

b. The Settling Generator Defendants may assert that certain documents, records and other information are protected as attorney work product or are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Generator Defendants assert such a protection or

privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Generator Defendants.

159. However, no documents, reports, or other information required to be submitted pursuant to the requirements of this Consent Decree shall be withheld on grounds that they are privileged. 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 developed pursuant to this Consent Decree or its Attachments evidencing conditions at or around the Site.

XXVII. RETENTION OF RECORDS

160. Until ten (10) years after the Settling Generator Defendants' receipt of EPA's notification pursuant to Paragraph 91 of Section XV (Certifications of Completion), each Settling Generator 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 Groundwater Remedial Action or Work under the UAO, 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 ten (10) years after the Settling Generator Defendants' receipt of EPA's notification pursuant to Paragraph 91 of Section XV (Certifications of Completion), Settling Generator 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 Groundwater Remedial Action.

161. At the conclusion of this document retention period, Settling Generator Defendants shall notify the United States and the State at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Generator Defendants shall deliver any such records or documents to EPA. If the United States has not responded to Settling Generator Defendants' notice prior to the time Settling Generator Defendants intend to destroy the records or documents, Settling Generator Defendants shall deliver all such records and documents to EPA no earlier than ten (10) days after providing an additional written notice that such

records and documents will be delivered, unless EPA provides otherwise after receiving such notice. The Settling Generator Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Generator Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Generator 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.

162. Each Settling Generator Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, 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 Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVIII. NOTICES AND SUBMISSIONS

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

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ #90-11-2-656A
and

Mary Rugala
Senior Assistant Regional Counsel (3RC22)
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to EPA:

Ruth Scharr [3HS21]
EPA Project Coordinator
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to the State:

Richard Morgan
State Project Coordinator
One Ararat Boulevard
Harrisburg, PA 17110

As to the Settling Generator Defendants:

John P. McBurney
Senior Project Coordinator
de maximis, inc.
186 Center Street
Clinton, NJ 08809

and

Robert E. Scott, Esquire
Semmes, Bowen, & Semmes
250 W. Pratt Street
Baltimore, MD 21201

XXIX. EFFECTIVE DATE

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

XXX. RETENTION OF JURISDICTION

165. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Generator 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 or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXI (Dispute Resolution) hereof.

XXXI. APPENDICES

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

"Appendix A" is the FFS.

"Appendix B" is the Groundwater Remedial Design.

"Appendix C" is the OUI ROD.

"Appendix D" is the set of procedures for petitioning for waiver due to technical impracticability

"Appendix E" is the Trust Agreement pursuant to Section XIV.

XXXII. COMMUNITY RELATIONS

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

XXXIII. MODIFICATION

168. Schedules specified in this Consent Decree, including those set forth in Section XI (Reporting Requirements) for completion of the Groundwater Remedial Action may be modified by agreement of the EPA Project Coordinator and the Settling Generator Defendants. All such modifications shall be made in

writing. In the event of a move, the party will provide written notice to the parties identified in Section XXVIII of changes to addresses and telephone numbers.

169. Except as otherwise provided in this Paragraph and Paragraph 168, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Generator Defendants, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Groundwater Remedial Design, Groundwater Remedial Action Work Plan, and any other plan approved by EPA under this Consent Decree that do not materially alter the requirements of those documents may be made by written agreement between the EPA Project Coordinator, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Generator Defendants. Modifications to the Groundwater Remedial Action made pursuant to Paragraphs 47 through 50 (Modification of the Groundwater Remedial Action) may be made by EPA. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications

to this Consent Decree.

XXXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

170. This Consent Decree shall be lodged with the Court for a period of not less than thirty (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 Generator Defendants consent to the entry of this Consent Decree without further notice.

171. 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.

XXXV. SIGNATORIES/SERVICE

172. Each undersigned representative of a Settling Generator 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

authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

173. Each Settling Generator 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 the Settling Generator Defendants in writing that it no longer supports entry of the Consent Decree.

174. Each Settling Generator 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 Generator 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.

SO ORDERED THIS 10th DAY OF Sept., 1999.

[Signature]
United States District Judge

FILED
HARRISBURG, PA
SEP 10 1999
MARY E. D'ANDREA, CLERK
Per *[Signature]*