

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

UNITED STATES OF AMERICA

Plaintiff,

v.

GATX CORPORATION,
GENERAL AMERICAN
TRANSPORTATION CORPORATION

Defendants.

CIVIL ACTION NO.

CONSENT DECREE

TABLE OF CONTENTS

I.	BACKGROUND	1
II.	JURISDICTION	5
III.	PARTIES BOUND	5
IV.	DEFINITIONS	6
V.	GENERAL PROVISIONS	13
VI.	PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS . . .	16
VII.	ADDITIONAL RESPONSE ACTIONS	27
VIII.	U.S. EPA PERIODIC REVIEW	28
IX.	QUALITY ASSURANCE	30
X.	ACCESS	35
XI.	REPORTING REQUIREMENTS	37
XII.	SUBMISSIONS REQUIRING AGENCY APPROVAL; COMMONWEALTH OF PENNSYLVANIA REVIEW AND COMMENT . .	40
XIII.	PROJECT COORDINATOR/REMEDIAL PROJECT MANAGER	42
XIV.	ASSURANCE OF ABILITY TO COMPLETE WORK	44
XV.	CERTIFICATION OF COMPLETION	45
XVI.	EMERGENCY RESPONSE	48
XVII.	REIMBURSEMENT OF RESPONSE COSTS; RECOVERY OF DAMAGES FOR NATURAL RESOURCES	49
XVIII.	INDEMNIFICATION AND INSURANCE	55
XIX.	FORCE MAJEURE	59
XX.	DISPUTE RESOLUTION	62
XXI.	STIPULATED PENALTIES	66
XXII.	COVENANTS NOT TO SUE BY PLAINTIFF	71
XXIII.	COVENANTS BY SETTLING DEFENDANTS	76

XXIV.	EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION . . .	77
XXV.	ACCESS TO INFORMATION	79
XXVI.	RETENTION OF RECORDS	80
XXVII.	NOTICES AND SUBMISSIONS	82
XXVIII.	EFFECTIVE DATE	83
XXIX.	RETENTION OF JURISDICTION	83
XXX.	APPENDICES	84
XXXI.	COMMUNITY RELATIONS	84
XXXII.	MODIFICATION	84
XXXIII.	LODGING AND OPPORTUNITY FOR PUBLIC COMMENT	85
XXXIV.	SIGNATORIES/SERVICE	86

RECORD OF DECISION Appendix A

SITE LOCATION MAP Appendix B

FORMER GATX PROPERTY MAP Appendix C

LIST OF DOCUMENTS PROVIDED BY THE SETTLING DEFENDANTS
TO EPA AND DOI AFTER THE ISSUANCE OF THE RECORD OF
DECISION Appendix D

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

UNITED STATES OF AMERICA

Plaintiff,

v.

GATX CORPORATION,
GENERAL AMERICAN
TRANSPORTATION CORPORATION

Defendants.

CIVIL ACTION NO.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA") and the Secretary for the United States Department of the Interior ("DOI"), filed a complaint in this matter pursuant to Sections 106, 107 and 113(b) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607 and 9613(b).

B. The United States in its complaint seeks:

(1) reimbursement of costs incurred by EPA and the United States Department of Justice ("DOJ") for response actions at the Saegertown Industrial Area Superfund Site (as defined below) in

Saegertown, Crawford County, PA, ("Site") together with accrued interest; (2) performance of studies and response work by the Defendants at the Former GATX Property (as defined below) portions of the Site in conformity with the Record of Decision (as defined below) and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); (3) a declaration of Defendants' liability for further response costs; (4) Natural Resource Damages (as defined below) and (5) such other relief as the Court finds appropriate.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Pennsylvania (the "Commonwealth") on October 30, 1992 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the Commonwealth with an opportunity to participate in such negotiations and be a party to this settlement.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of the Interior and the National Oceanic and Atmospheric Administration on October 6, 1992 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

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

complaint.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the CERCLA National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on February 21, 1990, 55 Fed. Reg. 6154.

G. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, General American Transportation Corporation, Lord Corporation, Saegertown Manufacturing Corporation and Spectrum Control, Incorporated commenced on January 31, 1990 a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the NCP.

H. The corporations named in Paragraph I.G, above, completed a Remedial Investigation ("RI") and a Feasibility Study ("FS") Report on October 13, 1992.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the RI/FS and of the proposed plan for remedial action on October 21, 1992 in two major local newspapers of general circulation, the Meadville Tribune and the Erie Times. EPA provided an opportunity for written and oral comments from the public on the proposed remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on January 29, 1993, on which the Commonwealth

had a reasonable opportunity to review and comment. The ROD includes a summary of responses to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

K. At the request of Settling Defendants and Lord Corporation, EPA negotiated this Consent Decree with Settling Defendants for the cleanup of the Former GATX Property portions of the Site, and another consent decree with Lord Corporation for the cleanup of the portion of the Site currently owned by Lord Corporation ("Lord Corporation Property").

L. Based on the information presently available to EPA, EPA believes that the Work (as defined below) will be conducted properly and promptly by the Settling Defendants.

M. The Remedial Action selected by EPA and set forth in the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j).

N. The Parties recognize, and the Court by entering this Consent Decree finds, that implementation of this Consent Decree will expedite the cleanup of the Former GATX Property portions 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

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 Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

B. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Former GATX Property portions of the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in

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

IV. **DEFINITIONS**

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:

1. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.
2. "Commonwealth" shall mean the Commonwealth of Pennsylvania.
3. "Consent Decree" shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and

any appendix, this Decree shall control.

4. "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.

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

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

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

8. "Future Response Costs" shall mean all costs, including, but not limited to, indirect costs, that the United States incurs in overseeing the Work, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VI.F (Performance of the Work by Settling Defendants), VII (Additional Response Actions), VIII (EPA Periodic Review) and X (Access) (including, but not limited to, attorneys' fees and the amount of any just compensation), and Section XVI.A (Emergency Response), and the costs of reviewing or developing plans, reports and other items pursuant to this Consent

Decree, verifying the Work, or otherwise implementing or enforcing this Consent Decree. Future Response Costs shall also include the following: all costs, including indirect costs, incurred by the United States in connection with the Site from February 1, 1990 through June 15, 1993; all costs, including indirect costs, incurred by the United States in connection with the Former GATX Property portions of the Site from June 16, 1993, to the effective date of this Consent Decree; costs incurred prior to February 1, 1990 that were not accounted for in EPA's Financial Management System, and all interest on those costs; and all interest on the Past Response Costs from February 1, 1990 to the date of payment of the Past Response Costs. This definition of Future Response costs shall not include costs for any response action or Operable Unit not addressed by this Consent Decree.

9. "Former GATX Property" shall mean the three parcels of property located at the Site which total approximately 22.5 acres and which are depicted on the map attached hereto as Appendix C.

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

11. "Natural Resource Damages" shall mean damages, including costs of damages assessment, recoverable under Section 107 of CERCLA, 42 U.S.C. § 9607, for injury to, destruction of, or loss of any and all natural resources for which DOI is a trustee at the

Site.

12. "Natural Resource Trustees" shall mean those federal officials designated pursuant to 40 C.F.R. § 300.600 to act on behalf of the public as trustees for natural resources.

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

14. "Oversight Costs" shall mean that portion of Future Response Costs incurred by EPA in monitoring and supervising the Settling Defendant's performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Oversight Costs do not include, inter alia: (1) the costs of direct action by EPA to investigate, evaluate or monitor a release, threat of release, or a danger posed by such problem; (2) the costs of litigation or other enforcement activities; (3) the costs of determining the need for or taking direct response actions by EPA to conduct a removal or remedial action at the Site, including but not limited to the cost of activities by EPA pursuant to Sections VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), and XVI (Emergency Response) of this Consent Decree; (4) the cost of undertaking the five-year review set forth in Section VIII (U.S. EPA Periodic

Review) or otherwise determining whether or to what extent the Work has reduced the release or threat of release at the Site; (5) the cost of enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XX (Dispute Resolution); (6) the cost of securing access under Section X (Access); (7) the cost of work performed under Section XXII (Covenants Not to Sue by Plaintiff) of this Consent Decree; and (8) response costs incurred prior to the entry of this Consent Decree not accounted for in EPA's Financial Management System.

15. "PADER" shall mean the Commonwealth of Pennsylvania Department of Environmental Resources and any successor departments or agencies of the Commonwealth.

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

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

18. "Past Response Costs" shall mean all costs, including, but not limited to, indirect costs, that the United States incurred with regard to the Site prior to February 1, 1990, and all interest on such costs accrued prior to that date. This definition of Past Response Costs shall not include costs not yet accounted for in EPA's Financial Management System or oversight costs incurred by the United States in connection with the Administrative Order by Consent (EPA Docket No. III-90-08-DC) signed by EPA on January 31, 1990.

19. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations that are used to determine whether the objectives of the ROD and this Consent Decree are being achieved. Performance Standards include those set forth on pages 92-96 of the ROD, attached hereto as Appendix A, and those that are developed by the Settling Defendants and approved by EPA during the Remedial Design.

20. "Plaintiff" shall mean the United States.

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

22. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site set forth in Appendix A hereto and signed on January 29, 1993 by the Acting Regional Administrator, EPA Region III, and all attachments thereto.

23. "Remedial Action" shall mean all activities, as defined by Section 101(24) of CERCLA, 42 U.S.C. § 9601(24), except for Remedial Design and Operation and Maintenance, to be undertaken by the Settling Defendants to implement both the ROD and the final plans and specifications submitted by the Settling Defendants pursuant to the Remedial Design Work Plan and approved by EPA.

24. "Remedial Action Work Plan" shall mean a plan for Remedial Action, including a schedule for implementation of Remedial Action, submitted by Settling Defendants and approved by EPA pursuant to Section VI.B of this Consent Decree.

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

26. "Remedial Design Work Plan" shall mean a plan for Remedial Design, including a schedule for remedial design work, submitted by the Settling Defendants and approved by EPA pursuant to Section VI.B of this Consent Decree.

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

28. "Settling Defendants" shall mean GATX Corporation and General American Transportation Corporation.

29. "Site" shall mean the Saegertown Industrial Area Superfund Site, encompassing approximately 100 acres, located in the Borough of Saegertown, Crawford County, Pennsylvania and depicted more particularly on the map attached as Appendix B, and which includes the Lord Corporation Property portion of the Site and the Former GATX Property portions of the Site.

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

31. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

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

V. GENERAL PROVISIONS

A. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment from releases or threatened releases of Waste Material from the Former GATX Property portions of the Site by the design and implementation of the Remedial Action and Operation & Maintenance at the Former GATX Property portions of the Site by the Settling Defendants and to reimburse response costs and compensate Natural Resource Damages of the Plaintiff.

B. Commitments by Settling Defendants

1. Settling Defendants shall finance and perform the Work in accordance with CERCLA, the NCP and this Consent Decree, including, but not limited to, pages 92-96 of Appendix A (the ROD) and all standards, specifications, and schedules set forth in or developed pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs, Future Response Costs, and Natural Resource Damages as provided in this Consent Decree.

2. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of one Settling Defendant to implement the requirements of this Consent Decree, the remaining Settling Defendant shall complete all such requirements.

3. In the event that either of the Settling Defendants

files for bankruptcy or is placed involuntarily in bankruptcy proceedings, such Settling Defendant shall notify the United States within three (3) days of such filing.

C. Compliance With Applicable Law

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

D. Permits

1. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. § 300.400(e), no permits shall be required for any portion of the Work conducted entirely on-Site. However, the Settling Defendants shall ensure that all portions of the Work on the Site shall meet the substantive requirements of any applicable or relevant and appropriate requirement subject to EPA's right of review and approval. Where any portion of the off-site Work requires a federal, state or local permit or approval, Settling Defendants shall timely submit complete applications and take all other actions necessary to obtain all such permits or approvals.

2. The Settling Defendants may seek relief under the

provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work, provided they have submitted all required information in a timely manner and have taken all other actions necessary to obtain such permit.

3. 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.

E. Relationship between Consent Order and Consent Decree

The United States and Settling Defendants have agreed that certain obligations under this Consent Decree shall commence at the Former GATX Property portions of the Site in accordance with the Administrative Order on Consent, EPA Docket No. III-93-04-DC ("Consent Order"), prior to the effective date of this Consent Decree. Upon the effective date of this Consent Decree, and as set forth in Section III of the Consent Order, the Consent Order shall terminate. The Parties agree that upon termination of the Consent Order due to entry of this Consent Decree, performance of Work commenced under the Consent Order shall continue under this Consent Decree in accordance with the EPA-approved schedules and requirements developed under the Consent Order. Moreover, to the extent that Work that is required both under the Consent Order and the Consent Decree is commenced or performed under the Consent Order and in accordance with the schedules approved thereunder, Settling Defendants shall not be found to be in violation of this

Consent Decree and shall not be subject to stipulated penalties for failure to commence or perform Work under the schedules set forth in this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

A. Selection of Contractors

1. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), IX (Quality Assurance) and XVI (Emergency Response) of this Consent Decree shall be under the direction and supervision of contractors and subcontractors, as well as qualified personnel of such contractors and subcontractors. The selection of such contractors and subcontractors shall be subject to acceptance or disapproval by EPA.

2. Remedial Design Contractor(s)

(a) Within fifteen (15) days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of all contractor(s) and subcontractors(s) and the personnel of such contractor(s) and subcontractor(s) to be used in carrying out all Remedial Design activities required by this Consent Decree. If at any time thereafter Settling Defendants propose to change any such contractor(s) or subcontractor(s), Settling Defendants shall give written notification to EPA and shall obtain acceptance from EPA before the new contractor(s) or subcontractor(s) perform(s),

direct(s), or supervise(s) any Work under this Consent Decree.

(b) EPA will notify Settling Defendants in writing of its acceptance or disapproval of selection of the proposed contractor(s), including subcontractor(s). If EPA disapproves the selection of Settling Defendants' proposed contractor(s), Settling Defendants shall submit to EPA the names and qualifications of at least three (3) contractors that would be acceptable to Settling Defendants within fourteen (14) days of receipt of EPA's disapproval of the selection of contractor(s) previously proposed. Except as provided below, EPA will provide written notice of the name(s) of the contractor(s) whose selection EPA accepts. Settling Defendants may select any accepted contractor(s) from that list and shall notify EPA of the name(s) of the contractor(s) selected within fourteen (14) days of EPA's designation of contractors whose selection is acceptable. Within fourteen (14) days of receipt of EPA acceptance of the Settling Defendants' selection of contractor(s), Settling Defendants shall enter into an agreement with such contractor(s) to perform the Work for which such contractor(s) selections were accepted by EPA. In the event that EPA does not accept any of the contractor selections proposed in Settling Defendants' list, EPA may direct Settling Defendants to submit to EPA the names and qualifications of at least three (3) additional contractors whose selection would be acceptable to Settling Defendants, within fourteen (14) days of receipt of EPA's disapproval of the contractors proposed by Settling Defendants.

3. Remedial Action Contractor(s)

(a) Within 60 (sixty) days after EPA approves the Remedial Action Work Plan submitted by Settling Defendants pursuant to Section VI.B.9 of this Consent Decree, and prior to the commencement of any Work thereunder, Settling Defendants shall notify EPA in writing of the name(s), title(s), and qualifications of all contractor(s) and subcontractor(s) and the personnel of such contractor(s) and subcontractor(s) proposed to be used in carrying out Work required by such approved Remedial Action Work Plan. If at any time thereafter Settling Defendants propose to change any such contractor(s) or subcontractor(s), Settling Defendants shall give written notification to EPA and shall obtain acceptance from EPA before the new contractor(s) or subcontractor(s) perform(s), direct(s), or supervise(s) any Work under this Consent Decree.

(b) EPA will accept or disapprove the selection of Remedial Action contractor(s) and subcontractor(s) proposed by Settling Defendants in accordance with the procedures described for the acceptance or disapproval of selection of Remedial Design contractor(s) and subcontractor(s) in Paragraph VI.A.2.(b), above.

4. If EPA fails to provide notice of its acceptance or disapproval of selection of any additional contractor or subcontractor as provided in this Paragraph VI.A., and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree.

5. EPA reserves the right to disapprove of the use or further use of any contractor or subcontractor at any time.

B. Remedial Design/Remedial Action

1. Within sixty (60) days after receiving notice of EPA acceptance of the selection of Remedial Design contractor(s), Settling Defendants shall submit to EPA for approval a work plan for the design of the Remedial Action at the Former GATX Property portions of the Site ("Remedial Design Work Plan") and shall submit the Quality Assurance Project Plan ("QAPjP"), prepared in accordance with Section IX. The Remedial Design Work Plan shall provide for the design of the remedy as set forth in pages 92-96 of Appendix A (the ROD) and, upon its approval by EPA, shall become enforceable under this Consent Decree. The Remedial Design Work Plan shall include plans, schedules, and methodologies for implementation of all necessary remedial design and pre-design tasks, including but not limited to: (a) a Sampling and Analysis Plan ("SAP") for Remedial Design field activities, prepared in accordance with Section IX (Quality Assurance); (b) a Contingency Plan for Remedial Design field activities; and (c) plans and schedules for the preparation and submission of preliminary, pre-final and final design submittals. In addition, the Remedial Design Work Plan shall include an expeditious schedule for completion of all components of the Remedial Design.

2. Within sixty (60) days after receiving notice of EPA's acceptance of the selection of Remedial Design contractor(s), Settling Defendants shall submit to EPA a Health and Safety Plan

for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

3. Upon EPA approval of the Remedial Design Work Plan, Settling Defendants shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. Settling Defendants shall submit all plans, submittals, and other deliverables required in accordance with the approved schedule therein for review and approval pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth of Pennsylvania Review and Comment) of this Consent Decree. Unless otherwise directed by EPA, Settling Defendants shall not commence Remedial Design or Remedial Action activities at the Former GATX Property portions of the Site prior to approval of the Remedial Design Work Plan.

4. Within sixty (60) days of receipt of notification from EPA that treatability studies are necessary, Settling Defendants shall submit to EPA for approval work plans and schedules for the design and implementation of such treatability studies. Upon EPA approval of a treatability study workplan, Settling Defendants shall implement such treatability study work plan and submit to EPA a report on the treatability study in the time and in the manner approved by EPA.

5. The preliminary design submittal required under Paragraph B.1.(c), above, shall include, at a minimum, the following: (a) design criteria; (b) results of any treatability

studies, if available; (c) results of any additional field sampling; (d) preliminary plans, drawings, and sketches; (e) required specifications in outline form; and (f) a preliminary construction schedule.

6. The pre-final design submittal required under Paragraph B.1.(c), above, shall include, at a minimum, the revised preliminary design which is fully responsive to all of EPA's comments and incorporates all changes requested by EPA on the preliminary design.

7. The pre-final and final design submittals required under Paragraph B.1.(c), above, shall each include, at a minimum, the following plans, as well as expeditious schedules and specific methodologies for implementation of these plans:

- (a) final designs and specifications for Remedial Action;
- (b) an Operation and Maintenance Plan;
- (c) a Remedial Action Contingency Plan;
- (d) a Field Sampling Plan directed at measuring progress toward meeting the Performance Standards;
- (e) a Remedial Action Construction Quality Assurance Plan ("CQAP") that details the approach to quality assurance during construction activities and specifies an Independent Quality Assurance Team ("IQAT") to conduct the quality assurance program during the construction phase of the project. The IQAT shall be responsible for examining and testing

various materials, procedures, and equipment during implementation of the construction activities. The IQAT shall perform On-Site inspections of the Work to assess compliance with project standards, verify that the CQAP is implemented, and report to the Settling Defendants and EPA the results of all inspections;

- (f) complete specifications for preparation of a Health and Safety Plan for Remedial Action field construction activities required by the final design. Settling Defendants shall ensure that specifications for the Health and Safety Plan as accepted by EPA are met by Settling Defendants' contractor(s) in preparing the Health and Safety Plan. The Health and Safety Plan shall conform to applicable Occupational Safety and Health Administration and EPA health and safety requirements including, but not limited to, the regulations at 29 C.F.R. § 1910.120; and
- (g) complete specifications for preparation of a Decontamination Plan that provides procedures and plans for the decontamination of equipment and disposal of contaminated materials. Settling Defendants shall ensure that specifications for the Decontamination Plan as approved by EPA are met by Settling Defendants' contractor(s) in preparing the

Decontamination Plan.

Settling Defendants shall submit the Health and Safety Plan for field activities to EPA for acceptance, and the Decontamination Plan for approval, in accordance with the schedule set forth in the final design submittal. All other plans described in this Paragraph shall be submitted to EPA for approval as part of the pre-final and final design submittal.

8. Upon approval by EPA, the final design submittal shall be enforceable under this Consent Decree.

9. Not later than sixty (60) days after EPA approves all submissions requiring EPA approval as part of the final design submittal, Settling Defendants shall submit a Remedial Action Work Plan to EPA for approval. The Remedial Action Work Plan shall be developed in accordance with the Remedial Design, as approved by EPA, and shall provide for implementation of the ROD. The Remedial Action Work Plan shall include, at a minimum, the following: (a) methodologies, plans, and expeditious schedules for implementation of the Remedial Design; (b) a groundwater monitoring plan to determine the extent of the aquifer contamination; (c) a Health and Safety Plan for Remedial Action field construction activities; and (d) a plan for decontamination of equipment and disposal of contaminated materials ("Decontamination Plan").

10. Upon approval by EPA, the Remedial Action Work Plan shall be enforceable under this Consent Decree.

11. Settling Defendants shall implement the EPA-approved Remedial Action Work Plan according to the schedules and

methodologies contained therein. Unless otherwise directed by EPA or required under the EPA-approved Remedial Design Work Plan, Settling Defendants shall not commence physical On-Site activities at the Site prior to the date for commencement set forth in the EPA-approved schedule in the Remedial Action Work Plan.

12. Not later than thirty (30) days after EPA's acceptance of Settling Defendants' selection of construction contractor(s) in accordance with Section VI.A. of this Consent Decree, Settling Defendants shall submit to EPA for approval a Construction Management Plan. The Construction Management Plan shall identify key personnel, their experience, their qualifications, and their responsibilities for construction activities. For the sole purpose of Paragraph B.13 below, the Construction Management Plan shall also identify the act that will define the beginning of implementation of the Remedial Action. Upon approval by EPA, the Construction Management Plan shall become an enforceable part of this Consent Decree.

13. Within forty-five (45) days after EPA approves the Construction Management Plan, Settling Defendants shall begin implementation of the Remedial Action. Settling Defendants shall implement and comply with the schedules and terms of all requirements relating to Remedial Action, including those in the Remedial Action Work Plan and the Construction Management Plan.

C. The Work performed by the Settling Defendants pursuant to this Consent Decree shall, at a minimum, achieve the Performance Standards as set forth in the ROD, Appendix A, on pages 92-96.

D. Settling Defendants acknowledge and agree that nothing in this Consent Decree, in Section IX of the ROD (The Selected Remedies and Performance Standards) set forth in pages 92-96 of Appendix A, or in the Remedial Design or Remedial Action Work Plans, constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements in Section IX of the ROD (The Selected Remedies and Performance Standards) and the Remedial Design and Remedial Action Work Plans, will achieve the Performance Standards set forth in the ROD. Such compliance with the work requirements in Section IX of the ROD shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

E. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Remedial Project Manager of such shipment of Waste Material. However, the notification requirement to EPA shall not apply to any off-Site shipment when the total volume of all shipments will not exceed ten (10) cubic yards.

1. The Settling Defendants shall include in the written notification the following information, where available: (a) the name and location of the facility to which the Waste Materials are to be shipped; (b) the type and quantity of the Waste Materials to be shipped; (c) the expected schedule for the shipment of the Waste

Materials; and (d) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Materials to another facility within the same state, or to a facility in another state.

2. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the written notification required by this Section VI.E, including the information required by Paragraph E.1, as soon as practicable after the award of the contract, but in no case less than fourteen (14) days before the Waste Materials are actually shipped.

F. In the event EPA determines that Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendants may dispute EPA's determination that the Settling Defendants failed to implement a provision of the Work in an adequate or timely manner only by invoking the procedures set forth in Section XX (Dispute Resolution). Such dispute shall be resolved on the administrative record pursuant to Section XX.D. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs for the purposes of Section XVII (Reimbursement of Response Costs; Recovery of Damages for Natural Resources).

VII. ADDITIONAL RESPONSE ACTIONS

A. In the event that EPA determines, or the Settling Defendants propose, that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided by EPA to the Settling Defendants' Project Coordinator or by Settling Defendants to the EPA Remedial Project Manager.

B. Within sixty days (or such longer time as may be specified by EPA) of receipt of notice from EPA pursuant to Paragraph A of this Section VII that additional response actions are necessary, Settling Defendants shall submit for approval by EPA, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Section VI (Performance of the Work by Settling Defendants). Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth of Pennsylvania Review and Comment), Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein.

C. Any additional response actions that Settling Defendants propose are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD shall be subject to approval by EPA, and, if authorized by EPA, shall be completed by Settling Defendants in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth of Pennsylvania Review and

Comment).

D. If required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, or the NCP, Settling Defendants and the public will be provided with an opportunity to comment on any additional response actions proposed pursuant to this Section VII.B or C and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region III, or his/her delegate will determine in writing whether additional response actions are appropriate.

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

VIII. U. S. EPA PERIODIC REVIEW

A. Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

B. If required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, or the NCP, Settling Defendants and the public will be provided with an opportunity to comment on

any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region III, or his/her delegate will determine in writing whether further response actions are appropriate.

C. If the Regional Administrator, EPA Region III, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), indicates that the Remedial Action is not protective of human health and the environment, the Settling Defendants shall undertake any further response actions EPA has determined are appropriate and that are not barred by the Covenant Not to Sue provided in Section XXII of this Consent Decree. However, the Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the Remedial Action is not protective of human health and the environment, or (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the further response action ordered is not barred by the Covenant Not to Sue in Section XXII of this Consent Decree. Such a dispute shall be resolved pursuant to Section XX.B through D of this Consent Decree.

D. Within sixty days after notice of EPA's determination that

further response actions are necessary or resolution of any dispute pursuant to Paragraph C of this Section VIII, whichever is later, Settling Defendants shall submit plans for design and implementation of any further response actions they are required to perform in accordance with the applicable procedures set forth in Sections VI (Performance of the Work by Settling Defendants) and XII (Submissions Requiring Agency Approval; Commonwealth of Pennsylvania Review and Comment) and, upon approval of such plans by EPA, shall complete the further response action in accordance with such plans and any schedules contained therein.

IX. QUALITY ASSURANCE

A. While conducting all sample collection and analysis activities required by this Consent Decree, the Settling Defendants shall implement quality assurance, quality control and chain of custody procedures in accordance with "Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA," 1988 (OSWER Directive 9355.3-01); "EPA NEIC Policies and Procedures Manual," May 1978, revised May 1986 (EPA 330/978-001-R); "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980 (QAMS 005/80); "A Compendium of Superfund Field Operations Methods," December 1987 (OSWER Directive 9355-0-14); and "Data Quality Objectives for Remedial Response Activities," March 1987 (OSWER Directive 9355.0-7B).

B. The Settling Defendants shall consult with EPA in planning for, and prior to, all sampling and analysis required by this

Consent Decree, and any subsequent EPA-approved plans prepared as part of this Consent Decree. Further, the Settling Defendants shall not commence sampling until EPA approves the Remedial Design Work Plan and the Sampling and Analysis Plan (SAP).

C. In order to provide quality assurance and maintain quality control regarding all samples collected pursuant to this Consent Decree, the Settling Defendants shall:

1. Submit to the EPA Remedial Project Manager 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. The SAP must state that all protocols described therein take precedence over protocols listed in the Laboratory QAPP.

2. Ensure that EPA personnel and/or its authorized representatives are allowed reasonable access to the laboratory(ies), records and personnel utilized by the Settling Defendants in implementing this Consent Decree.

3. Prepare a SAP, consisting of a Quality Assurance Project Plan (QAPjP) and a Field Sampling Plan (FSP), for sample collection, transportation, analysis, validation and reporting to be conducted pursuant to this Consent Decree. The SAP shall be submitted as part of the Remedial Design Work Plan to the EPA Remedial Project Manager for review and approval prior to commencing sampling and analysis. Each plan shall specify, for the phase of activity addressed, the data quality objectives (DQOs),

sample collection and transportation procedures, data analysis methods, data reduction, data review, and reporting procedures. Selection of analytical methods shall be justified in conjunction with the DQOs. The guidelines referenced in Paragraph A, above, shall be followed in the preparation of the SAP; additional guidance may be provided by EPA when applicable and/or requested by the Settling Defendants.

4. Ensure that the laboratory(ies) analyzing samples pursuant to this Consent Decree use(s) appropriate methods. If EPA Contract Lab Program (CLP) methods are selected, the laboratory(ies) shall use these methods and submit deliverables delineated in the current "Statement of Work of the EPA Contract Lab Program." If non-CLP methods are selected, all constituents and physical parameters shall be analyzed using methods that are specified (method and reference) and justified in the SAP. Non-CLP methods shall be fully described in the QAPjP and approved by the EPA Remedial Project Manager prior to conducting any sampling and analysis. This description shall include, at a minimum, the matrix, calibration, Quality Control (QC) samples (type and frequency), corrective measures, and deliverables.

5. Ensure that the laboratory(ies) analyzing samples pursuant to this Consent Decree agree(s) to demonstrate its (their) capability to perform the selected analyses by analyzing PE samples, supplied by EPA. Analysis of PE samples may be waived by EPA if the laboratory(ies) satisfactorily analyzed PE samples using the selected methods within the six months prior to analysis

conducted pursuant to this Consent Decree. Documentation of such PE sample analysis shall be submitted to the EPA Remedial Project Manager for verification.

6. At the request of EPA, conduct one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the SAP. Auditors shall conduct lab audits at sometime 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 EPA Environmental Services Division Quality Assurance Branch (QA Branch). Audit reports shall be submitted to the EPA Remedial Project Manager within forty-five days of completion of the audit. The Settling 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 hours of the time the Settling Defendants knew or should have known of the deficiency.

7. Conduct at least one field audit (to be described in the QAPjP) during initial sampling activities to verify that field samplers are correctly following sampling procedures described in the SAP. A report of the field audit shall be submitted to the EPA Remedial Project Manager within forty-five days of completion of the audit. Settling Defendants shall report the scope of the audit and the deficiencies noted, and take action to correct such deficiencies within twenty-four hours of the time the Settling Defendants knew or should have known of the deficiency. EPA shall

have the option to audit any stage of the field activities.

8. Provide data validation of analyses completed by the laboratory(ies), to determine data usability. If the data is derived by CLP methods, the data validation shall be performed in accordance with the most recent National Functional Guidelines for Data Review and Region III Modifications (available from the QA Branch). For non-CLP methods, the data validation shall be performed as described in the SAP and in accordance with the QC data validation criteria set forth in that method. The quality assurance data validation reports shall be prepared using EPA Region III format (available from the QA Branch) and shall be submitted, along with the validated data summary sheets and the laboratory sample results, to the EPA Remedial Project Manager.

D. At the request of EPA, the Settling Defendants shall allow split or duplicate samples to be taken by EPA, and/or its authorized representatives, of any samples collected by the Settling Defendants pursuant to this Consent Decree. The Settling Defendants shall notify EPA not less than twenty-one (21) days in advance of any such sample collection activity. In addition, EPA shall have the right to take any additional samples that EPA deems appropriate. At the request of the Settling Defendants, EPA shall allow split and/or duplicate samples to be taken by the Settling Defendants and/or their authorized representatives of any sample collected by EPA pursuant to this Consent Decree.

E. Within seven days of a request by EPA, Settling Defendants shall submit to EPA two (2) copies of the results of any sampling

and/or test or other data obtained or generated by or on behalf of the Settling Defendants pursuant to this Consent Decree and requested by EPA.

F. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statute or regulation.

X. ACCESS

A. Commencing upon the date of lodging of this Consent Decree, and to the extent the property is owned or access to the property is controlled by Settling Defendants, the Settling Defendants agree that the United States and its representatives, including EPA and its contractors, shall have access at all times to the Former GATX Property portions of the Site and any other property to which access is required for the implementation of this Consent Decree, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

1. Monitoring the Work;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples;
5. Assessing the need for, planning, or implementing additional response actions at or near the Site;

6. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents consistent with Section XXV (Access to Information); and

7. Assessing Settling Defendants' compliance with this Consent Decree.

B. To the extent that the Former GATX Property portions of the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for itself, as well as for the United States and its representatives, including, but not limited to, EPA and its 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. If any access required to complete the Work is not obtained within forty-five days of the date of lodging of this Consent Decree, or within forty-five days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States may, in its unreviewable discretion, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States, in accordance with the procedures in Section XVII (Reimbursement of

Response Costs; Recovery of Damages for Natural Resources), for all costs incurred by the United States in obtaining access.

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

XI. REPORTING REQUIREMENTS

A. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the Commonwealth five copies each of a written monthly progress report that: (1) describes the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (2) includes a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (3) identifies all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (4) describes all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (5) includes information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to

mitigate those delays or anticipated delays; (6) includes any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (7) describes all activities, as approved by EPA under Section XXXI (Community Relations) undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Settling Defendants shall submit these progress reports to EPA and the Commonwealth by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph B(2) of Section XV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

B. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, implementation of work plans, no later than seven days prior to the original date for performance of the activity. Notwithstanding the foregoing, the Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of data collection no later than thirty days prior to the performance of such activity.

C. In addition to the reporting required by CERCLA Section 103, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004, upon the occurrence of any event during performance of the Work that

Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of EPCRA, 42 U.S.C. § 11004, Settling Defendants shall, within twenty-four hours of the onset of such event, orally notify the EPA Remedial Project Manager or the Central Pennsylvania Section Chief (in the event of the unavailability of the EPA Remedial Project Manager), or, in the event that neither the EPA Remedial Project Manager nor the Central Pennsylvania Section Chief is available, the EPA Region III Hotline at (215) 597-9898. Within twenty days of the onset of such an event, Settling Defendants shall furnish to EPA and the Commonwealth a written report, signed by the Settling Defendants' Project Coordinator (designated pursuant to Section XIII), setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

D. Except as otherwise provided in this Consent Decree, Settling Defendants shall submit two (2) copies of all plans, reports, and data required by the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit two (2) copies of all such plans, reports and data to the Commonwealth.

E. Plans, design documents, proposals, reports or other documents shall be signed by a Duly Authorized Representative of each of the Settling Defendants certifying the information as

follows:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The Remedial Design Work Plan, Remedial Action Work Plan and any other work plan approved by EPA pursuant to this Consent Decree shall specify which documents shall be so certified.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL:
COMMONWEALTH OF PENNSYLVANIA REVIEW AND COMMENT

A. Any plan, report, or other item which is required to be submitted for approval by EPA pursuant to this Consent Decree shall be submitted to the Commonwealth at the same time it is submitted to EPA. After review of any such plan, report or other item, EPA shall, after reasonable opportunity for review and comment by the Commonwealth: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) modify the submission to cure the deficiencies; (4) direct that the Settling Defendants modify the submission; (5) disapprove, in whole or in part, the submission, notifying Settling Defendants of deficiencies; or (6) any combination of the above.

B. In the event of approval, approval upon conditions, or modification by EPA, Settling Defendants shall proceed to take any

action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA.

C. Upon receipt of a notice of disapproval or a notice requiring a modification, Settling Defendants shall, within thirty days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval or a notice requiring a modification, Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

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

Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties) for any violations of this Consent Decree relating to any deficient portion of the submission.

E. If a plan, report, or item is disapproved by EPA because

it is deemed substantially deficient by EPA, Settling Defendants shall be deemed to be in violation of the provision of this Consent Decree requiring the Settling Defendants to submit such plan, report, or item unless the Settling Defendants invoke dispute resolution and this Court overturns EPA's disapproval. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution.

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

XIII. PROJECT COORDINATOR/REMEDIAL PROJECT MANAGER

A. EPA has selected a Remedial Project Manager for this Site. The EPA Remedial Project Manager is the EPA representative to whom notices and other submissions are to be submitted pursuant to Section XXVII (Notices and Submission) of this Consent Decree. Within twenty days of lodging this Consent Decree, Settling Defendants will notify the EPA Remedial Project Manager, in writing, of the name, address and telephone number of their designated Project Coordinator. EPA shall have the right to change its Remedial Project Manager and Settling Defendants shall have the

right to change their Project Coordinator. Any such change shall be accomplished by notifying the other party, in writing, at least five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to acceptance by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be acting as an attorney for either of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

B. EPA may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. The EPA Remedial Project Manager shall have the authority lawfully vested in a Remedial Project Manager by the NCP. In addition, the EPA Remedial Project Manager shall have authority, consistent with the NCP, to halt or redirect any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site may constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

C. EPA's Remedial Project Manager and the Settling

Defendants' Project Coordinator will meet following any party's reasonable request for a meeting.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

A. Within thirty days of lodging of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$15,210,000 in one of the following forms:

- (1) A surety bond guaranteeing performance of the Work;
- (2) One or more letters of credit;
- (3) A trust fund;

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

(5) A demonstration that the Settling Defendants satisfy the requirements of 40 C.F.R. § 264.143(f) (April 7, 1982, as amended May 2, 1986).

Such financial security shall be maintained by the Settling Defendants until EPA agrees that the Work has been completed and issues a Certification of Completion in accordance with Section XV.

B. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph A(4) of this Section XIV, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test

or the corporate guarantee, they shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually on March 31. In the event that EPA, after a reasonable opportunity for review and comment by the Commonwealth, determines at any time that the financial assurances provided pursuant to this Paragraph are inadequate, Settling Defendants shall, within thirty 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 A of this Section XIV. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not, by itself, excuse performance of any activities required under this Consent Decree.

XV. CERTIFICATION OF COMPLETION

A. Completion of the Remedial Action

1. Within thirty days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall so certify to the United States and shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth of Pennsylvania Review and Comment) within thirty days of the

inspection. In the report, a registered professional engineer ("RPE") and a Duly Authorized Representative of each of the Settling Defendants shall certify pursuant to Section XI.E that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a RPE and certified as required by Section XI.E. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth of Pennsylvania Review and Comment). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution).

2. If EPA concludes, based on the initial or any subsequent Certification of Completion by Settling Defendants, that the Remedial Action has been fully performed in accordance with

this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree that continue beyond the Certification of Completion, including, but not limited to, access, Operation and Maintenance, record retention, indemnification, insurance, payment of Future Response Costs and penalties, and any work to be conducted under Section VII (Additional Response Actions) and Section VIII (U.S. EPA Periodic Review), Section XI (Reporting Requirements), Section XXV (Access to Information) and Section XXXI (Community Relations).

B. Completion of the Work

1. Within thirty days after Settling Defendants conclude that all phases of the Work (including O & M), with the exception of the payment of Future Response Costs associated with this Paragraph, have been fully performed, Settling Defendants shall so certify to the United States by submitting a written report by a RPE certifying that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall also contain the certification required by Section XI.E. If, after review of the written report, EPA determines that any portion of the Work has not been completed in accordance with

this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval; Commonwealth of Pennsylvania Review and Comment). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

2. If EPA concludes, based on the initial or any subsequent Certification of Completion by Settling Defendants that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XVI. EMERGENCY RESPONSE

A. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material that constitutes an emergency situation or may present an immediate threat to the public health or welfare or the environment, Settling Defendants shall, subject to Paragraph B of this Section XVI, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA Remedial Project Manager, or, if the EPA Remedial Project Manager is unavailable, his or her Central

Pennsylvania Section Chief, Superfund Pennsylvania Remedial Branch.

If neither of these persons is available, the Settling Defendants shall notify the EPA Region III Hotline at (215) 597-9898.

Settling Defendants shall take such actions in consultation with the EPA Remedial Project Manager or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, or any other applicable plans or documents developed and approved pursuant to this Consent Decree. In the event that Settling Defendants fail to take sufficient response action as required by this Section, and EPA takes such action, Settling Defendants shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs; Recovery of Damages for Natural Resources).

B. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health, welfare and the environment or to prevent, abate, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

**XVII. REIMBURSEMENT OF RESPONSE COSTS; RECOVERY OF DAMAGES
FOR NATURAL RESOURCES**

A. Within thirty days of the effective date of this Consent Decree, Settling Defendants shall pay to the United States \$65,785.37 in reimbursement of Past Response Costs, by Electronic

Funds Transfer ("EFT") or wire transfer to the U.S. Department of Justice lockbox bank, referencing EPA I.D. Number 03-T1, DOJ Case Number 90-11-2-870, and the U.S. Attorneys Office File Number 9301365. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendants upon execution of the Consent Decree. Any EFTs received at the U.S. Department of Justice lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next business day.

B.1 Settling Defendants shall reimburse the United States for 75% of all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States in connection with the entire Site. Settling Defendants shall also reimburse the United States for 100% of all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States specifically in connection with the Former GATX Property portions of the Site. The United States will send Settling Defendants on an annual basis a bill requiring payment that includes a cost summary, setting forth direct and indirect costs incurred by EPA, DOJ and their contractors. Settling Defendants shall make all payments within thirty days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph C of this Section. The Settling Defendants shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing EPA I.D. Number 03-T1 and DOJ Case Number 90-11-2-870 in reimbursement of Future

Response Costs. The Settling Defendants shall forward the certified 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 to the United States and the Regional Hearing Clerk (3RC00), United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

B.2. Notwithstanding Paragraph B.1 of this Section XVII (Reimbursement of Response Costs; Recovery of Damages for Natural Resources), the Settling Defendant shall be obligated to reimburse the United States for Oversight Costs only in the event that the decision in United States v. Rohm and Haas Co., No. 92-1517 (3rd Cir. Aug. 12, 1993) regarding the liability of responsible parties under Section 107(a)(4)(A) of CERCLA for EPA Oversight Costs is reversed or overruled by the Court of Appeals for the Third Circuit or the United States Supreme Court, or overruled by the United States Congress through amendment to CERCLA or otherwise. Nothing in this Paragraph B.2 shall be deemed to be an adjudication by this Court or an admission by EPA or the United States or shall be admissible in any other proceeding as to the legal issue whether oversight costs are properly recoverable under Section 107 of CERCLA or pursuant to a settlement of such an action.

C. Settling Defendants may contest payment of any Future Response Costs under Paragraph B.1 of this Section if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that

are inconsistent with the NCP. Such objection shall be made in writing within thirty days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the thirty-day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph B.1 of this Section. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a bank duly chartered in the Commonwealth of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established, a bank statement showing the initial balance of the escrow account and a copy of the escrow agreement establishing the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants may initiate the dispute resolution procedures set forth in Section XX (Dispute Resolution). Failure to initiate the dispute resolution procedures set forth in Section XX within the thirty-day period following receipt of the bill shall be a waiver of Settling

Defendants' right to initiate dispute resolution with respect to that issue. If the Settling Defendants fail to initiate the dispute resolution procedures set forth in Section XX within the thirty-day period following receipt of the bill, then within five days of such 30th day, the Settling Defendants shall direct the escrow holder to remit the escrowed monies (with accrued interest) to the United States in the manner described in Paragraph B.1 of this Section. If the United States prevails in the dispute, then within five days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph B.1 of this Section. If the Settling Defendants prevail in any aspect of the contested costs, the Settling Defendants shall direct the escrow holder to remit payment for that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph A of this Section; the balance of the escrow account shall be disbursed to Settling Defendants. The Dispute Resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

D. In the event that the payments required by Paragraph A of this Section are not made within thirty days of the effective date of this Consent Decree or the payments required by Paragraph B.1 of

this Section are not made within thirty days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest on Past Response Costs shall begin to accrue thirty days after the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue thirty days after the Settling Defendants' receipt of the bill. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Defendants' failure to make timely payments under this Section.

E. In addition to interest, a penalty charge of six percent will be assessed on any portion of the debt which remains delinquent more than ninety days after payment is due. However, should assessment of the penalty be required, it will be assessed from the first day payment is due as specified in Section XVII.A. Thus, to avoid the assessment of penalties, Settling Defendants must make the payment under Section XVII.A within ninety days of the date the payment is due. Penalty charge payments shall be made by certified check made payable to "Treasurer, United States of America." Payments shall be mailed to U.S. EPA Region III, P.O. Box 360515, Pittsburgh, PA 15251-6515. Copies of checks(s) paid pursuant to this Paragraph, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions) and to the Regional Hearing Clerk (3RC00), United States Environmental Protection Agency,

Region III, 841 Chestnut Building, Philadelphia, PA 19107.

F. Within sixty (60) days of the effective date of this Consent Decree, Settling Defendants shall pay DOI \$94,510.00 in compensation for Natural Resource Damages. Settling Defendants shall make the payment required by this Paragraph F in the form of a certified check made payable to "U.S. Department of the Interior", and referencing Account Number 14X1618 and the name of the Site. Settling Defendants shall forward the certified check by certified mail, return receipt requested to: Chief, Division of Finance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22030. Settling Defendants shall simultaneously send a copy of the check to Mark Barash, Esquire, United States Department of the Interior, Office of the Solicitor, One Gateway Center, Suite 612, Newton Corner, MA 02158-2668, and to the United States as set forth in Section XXVII (Notices and Submissions).

XVIII. INDEMNIFICATION AND INSURANCE

A. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's designated representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Defendants hereby indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Settling Defendants, their officers, directors, employees, agents,

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

B. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants hereby

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

C. No later than fifteen days before commencing any on-site Work, Settling Defendants shall secure and maintain or shall ensure that their Supervising Contractor, contractors and subcontractors secure and maintain, until the first anniversary of EPA's certification of completion of the Remedial Action pursuant to Paragraph A.2 of Section XV (Certification of Completion), comprehensive general liability insurance with limits of five million dollars, combined single limit, naming as additional insured the United States. No later than fifteen days after the effective date of this Consent Decree, Settling Defendants shall secure automobile liability insurance with limits of \$500,000 and shall maintain such insurance until the first anniversary of EPA's certification of completion of the Remedial Action pursuant to Paragraph A.2 of Section XV (Certification of Completion). In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, and shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the

Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of comprehensive general liability and automobile insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to matters so insured by that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Settling Defendants may satisfy the provisions of this Paragraph C if they submit to EPA for approval one of the financial assurance mechanisms of Section XIV (Assurance of Ability to Complete Work) in at least the amounts stated in this Paragraph C, demonstrating that Settling Defendants are able to pay any claims arising out of Settling 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 Work). If Settling Defendants seek to utilize the mechanisms set forth in Section XIV (Assurance of Ability to Complete Work) to satisfy the provisions of this Paragraph C, 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

Work).

XIX. FORCE MAJEURE

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

B. 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 Defendants shall notify by telephone the EPA Remedial Project Manager or, in his or her absence, the Central Pennsylvania Section Chief, Superfund Pennsylvania Remedial Branch or, in the event both of EPA's designated representatives are unavailable, the EPA Region III Emergency Hotline at (215) 597-9898, within forty-eight hours of

when Settling Defendants or either one of them first knew or should have known that the event might cause a delay. Within five days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay, the obligations and deadlines Settling Defendants claim are affected by 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 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 Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include, with any notice, all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

C. If EPA, after a reasonable opportunity for review and comment by the Commonwealth, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for

such time as is necessary to complete those obligations, and EPA will notify the Settling Defendants of the length of the extension, if any, affected by the force majeure event for performance of the obligations. An extension of the time for performance of the obligation(s) affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision.

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

XX. DISPUTE RESOLUTION

A. 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 Defendants that have not been disputed in accordance with this Section.

B. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty 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.

C. 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 ten days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling

Defendants' position as to whether formal dispute resolution should proceed under Paragraph D or E.

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

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

D. 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 Defendants regarding the validity of the ROD's provisions.

1. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph and Paragraph C, above. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

2. The Associate Director for Superfund of the Hazardous Waste Management Division of EPA Region III will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph D.1 of this Section. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs D.3 and D.4 of this Section.

3. Any administrative decision by EPA pursuant to Paragraph D.2 of this Section shall be reviewable by this Court, provided that a notice of judicial appeal under this Section XX is filed by the Settling Defendants with the Court and served on all Parties within ten days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent

Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

4. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of EPA is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraphs D.1 and D.2 of this Section XX.

E. 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.

1. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph C of this Section, the Associate Director for Superfund of the Hazardous Waste Management Division of EPA Region III will issue a final decision resolving the dispute. The EPA's decision shall be binding on the Settling Defendants unless, within ten days of receipt of the decision, the Settling Defendants file with the Court and serve on the Plaintiff a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

2. Notwithstanding Paragraph M of Section I

(Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law. In any such proceeding, the Settling Defendants shall bear the burden of coming forward with evidence and the burden of persuasion.

F. The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone, or affect in any way any obligation of the Settling Defendants under this Consent Decree, except that payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute as provided in Paragraph H of Section XXI. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

A. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs B and C of this Section to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities under this

Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, 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.

B. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified in Paragraph B.2, below, of this Section:

1. <u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$3,000	1st through 14th day
\$6,000	15th through 30th day
\$10,000	31st day and beyond

2. Failure to comply with requirements of Section VI (Performance of the Work by Settling Defendants), Section VII (Additional Response Actions), Section VIII (U.S. EPA Periodic Review), Section IX (Quality Assurance), Section XII (Submissions Requiring Agency Approval; Commonwealth of Pennsylvania Review and Comment), and Section XVI (Emergency Response).

C. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified in Paragraph C.2, below, of this Section:

1. <u>Penalty Per Violation</u> <u>Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$2,000	15th through 30th day
\$3,000	31st day and beyond

2. Failure to comply with the requirements of Section V (General Provisions), Section XI (Reporting Requirements), Section XIV (Assurance of Ability to Complete Work), and Section XV (Certification of Completion).

D. 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. Separate penalties shall accrue for each separate violation of this Consent Decree.

E. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of same and describe the noncompliance. However, penalties shall accrue as provided in the preceding Paragraph whether or not EPA has notified the Settling Defendants of a violation. EPA may send the Settling Defendants a written demand for payment of the penalties.

F. All penalties owed to the United States under this Section shall be due and payable within thirty days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments

under this Section shall be paid by certified check made payable to "EPA Hazardous Substance Superfund," shall be mailed to United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515 and shall reference DOJ Case Number 90-11-2-870. 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 XXVII (Notices and Submissions) and to the Regional Hearing Clerk (3RC00), United States Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107.

G. Neither the invocation of dispute resolution procedures under Section XX (Dispute Resolution) nor the payment of penalties shall alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

H. Penalties shall continue to accrue as provided in Paragraph D of this Section during any dispute resolution period, and shall be paid as follows:

1. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen days of the agreement or the receipt of EPA's decision or order;
2. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed

to the United States within fifteen days of receipt of the Court's decision or order, except as provided in Subparagraph 3 below;

3. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account established in accordance with the procedures set forth in Section XVII.C., within fifteen 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 days. Within fifteen days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account, including interest and penalties, to EPA and/or Settling Defendants in accordance with the final appellate court decision.

I. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties and interest and also the penalty charge as set forth in Section XVII.E. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue at the end of the thirty-day period following Settling Defendants' receipt from EPA of a demand for payment at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Penalty charge payments shall be made payable to the "Treasurer, United States of America," and shall be mailed as set forth in Section XVII.E. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any

other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

J. No payments made under this Section shall be tax deductible for federal tax purposes.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

A. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs B, C, and F of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Former GATX Property portions of the Site, including, but not limited to, an action for damages for injury to, destruction of, or loss of natural resources for which DOI is the trustee resulting from the release or threat of release of hazardous substances from the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph A of Section XVII (Reimbursement of Response Costs; Recovery of Damages for Natural Resources)) and upon receipt by DOI of the payment required by Paragraph F of Section XVII (Reimbursement of Response Costs; Recovery of Damages for Natural Resources), respectively. With

respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph A.2 of Section XV (Certification of Completion). These covenants not to sue with respect to Settling Defendants are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree; however this does not affect Settling Defendants' obligations under Section V.B.2. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

B. United States' Pre-certification reservations.

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

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

and these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the

environment.

C. United States' Post-certification reservations.

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

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

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

D. United States' Natural Resource Damages reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, on behalf of its Natural Resource Trustees, the right to institute proceedings against Settling Defendants in this action or in any new action seeking recovery of Natural Resource Damages based on (1) conditions with respect to the Former GATX Property portions of the Site, unknown to the United States on the date of lodging of this Consent Decree, that result in further releases of hazardous substances that contribute

to injury to, destruction of, or loss of natural resources, except such conditions that result as a foreseeable consequence of carrying out the Work, or (2) information received, in whole or in part, by the United States after the date of lodging of this Consent Decree which, together with other relevant information, indicates: (i) that there is injury to, destruction of, or loss of natural resources of a different type than was known to the United States on the date of lodging of this Consent Decree, or (ii) that there is injury to, destruction of, or loss of natural resources of a substantially greater magnitude than was known to the United States on the date of lodging of this Consent Decree.

E. For purposes of Paragraph B of this Section, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph C of this Section, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action. For purposes of Paragraph D of this Section, the information and conditions known to the United States on the date of lodging of this Consent Decree shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of

Decision, and the documents listed in Appendix D to this Consent Decree.

F. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph A of this Section. The United States reserves, and this Consent Decree is without prejudice to, all rights, (including, but not limited to, causes of action under Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a)) against Settling Defendants with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;
- (2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- (3) liability for damages for injury to, destruction of, or loss of natural resources, other than those for which DOI is the trustee;
- (4) liability for response costs that have been or may be incurred by all federal agencies, other than DOI, which are Natural Resource Trustees and which have spent, or may in the future spend, funds relating to the Site;
- (5) criminal liability;
- (6) liability for violations of federal or state law which occur during or after implementation of the

Remedial Action;

- (7) liability for response actions caused by contamination of the groundwater at the Former GATX Property, as set forth on page 96 of Appendix A; and
- (8) liability for costs that the United States has incurred or will incur related to the Site but which are not within the definition of Past and Future Response Costs.

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

XXIII. COVENANTS BY SETTLING DEFENDANTS

Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113, 42 U.S.C. §§ 9606(b)(2), 9611, 9612, 9613, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. However, the Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent

action taken directly by the United States (not including oversight or approval of the Settling Defendants' plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

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

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

C. The Settling Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related

to this Consent Decree, they will notify the United States in writing no later than sixty days prior to the initiation of such suit or claim. The Settling Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify in writing the United States within ten days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within ten days of service or receipt of any Motion for Summary Judgment and within ten days of receipt of any order from a court setting a case for trial. Settling Defendants acknowledge that the United States has no obligation to defend it in any suit or claim for contribution.

D. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiff).

XXV. ACCESS TO INFORMATION

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

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

C. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal courts in actions involving the United States. If the Settling 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 contents of the document, record, or information; and (6) the nature and basis of the privilege asserted by Settling Defendants. However, no documents, records or information created, generated or collected pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

XXVI. RETENTION OF RECORDS

A. Each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person, including

any Settling Defendant, for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary, until ten years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph B.2 of Section XV (Certification of Completion). Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work until ten years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph B.2 of Section XV (Certification of Completion).

B. Upon conclusion of this document retention period, Settling Defendants shall notify the United States at least ninety days prior to the destruction of any such records, documents or information, and, upon request of EPA, Settling Defendants shall deliver all such documents, records and information to EPA. In no event shall Settling Defendants destroy such records or documents until EPA responds in writing approving such destruction.

C. Each Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State, or the filing of any earlier 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.

XXVII. NOTICES AND SUBMISSIONS

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 specified in the particular Section of this Consent Decree at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ Case Number 90-11-2-870

and

Andrew M. Duchovnay (3RC22)
Office of Regional Counsel
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to EPA:

Steven J. Donohue (3HW24)
EPA Remedial Project Manager
United States Environmental Protection Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

As to the Settling Defendants:

Richard Dahl
Settling Defendants' Project Coordinator
General American Transportation Corporation
500 W. Monroe Street
Chicago, IL 60661-3677

XXVIII. EFFECTIVE DATE

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

XXIX. RETENTION OF JURISDICTION

This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties 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 XX (Dispute Resolution) hereof.

XXX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the Site Location Map.

"Appendix C" is the Former GATX Property Map.

"Appendix D" is the List of Documents Provided by the Settling Defendants to DOI and EPA after the Issuance of the Record of Decision.

XXXI. COMMUNITY RELATIONS

Settling Defendants shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXII. MODIFICATION

A. Schedules for completion of the Work specified in this Consent Decree or documents approved pursuant to this Consent Decree may be modified by agreement of the Parties. All such modifications shall be made in writing.

B. No modifications shall be made to provisions of this Consent Decree without written notification to, and written approval of, the United States, Settling Defendants, and the Court.

C. Modifications to the Remedial Design Work Plan and the Remedial Action Work Plan that do not materially alter the requirements of those documents may be made by written agreement between EPA and the Settling Defendants.

D. Nothing in this Section shall be deemed to alter the Court's power to enforce, supervise or modify this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

A. This Consent Decree shall be lodged with the Court for a period of not less than thirty days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XXXIV. SIGNATORIES/SERVICE

A. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice of the United States 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.

B. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or challenge any provision of this Consent Decree.

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

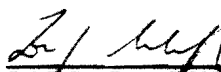
SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. GATX Corporation et al., relating to the Former GATX Property portions of the Saegertown Industrial Area Superfund Site.


FOR THE UNITED STATES OF AMERICA

Date: 11/2/94



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

Date: 11/9/94



SARAH D. HINKELHOCH
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____

THOMAS W. CORBETT, JR.
United States Attorney
Western District of Pennsylvania

Date: _____

MICHAEL C. COLVILLE
Assistant United States Attorney
Western District of Pennsylvania
U.S. Department of Justice

Date: 8/5/94

PETER H. KOSTMAYER
Regional Administrator
U.S. Environmental Protection
Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

Date: 8/26/94

Marcia E. Mulkey
MARCIA E. MULKEY
Regional Counsel
U.S. Environmental Protection
Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

Date: 8/11/94

Andrew H. Duchovnay
ANDREW H. DUCHOVNAY
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region III
841 Chestnut Building
Philadelphia, PA 19107

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. GATX Corporation et al., relating to the Former GATX Property portions of the Saegertown Industrial Area Superfund Site.

FOR GATX CORPORATION

Date: AUG 24 1994



PAUL A. HEINEN
Vice President
GATX Corporation
500 W. Monroe Street
Chicago, IL 60661-3676

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

John D. Levin, Esq.
Assistant General Counsel
GATX Corporation
500 W. Monroe Street
Chicago, IL 60661-3676


Saegertown Industrial Area Superfund Site
Civil Action No. _____

90

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. GATX Corporation et al., relating to the Former GATX Property portions of the Saegertown Industrial Area Superfund Site.

FOR GENERAL AMERICAN TRANSPORTATION CORPORATION

Date: _____



TERRENCE J. HEIDKAMP
Vice President, Operations
General American Transportation
Corporation
500 W. Monroe Street
Chicago, IL 60661-3677

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

John D. Levin, Esq.
Assistant General Counsel
GATX Corporation
500 W. Monroe Street
Chicago, IL 60661-3676