

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

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UNITED STATES OF AMERICA
and STATE OF VERMONT,

Plaintiffs,

v.

TOWN OF BENNINGTON, ET AL.,

Defendants.

Civil Nos. 2:97-CV-197

and 2:97-CV-208 ✓

CONSENT DECREE

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I. BACKGROUND

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

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred and to be incurred by EPA and the Department of Justice for response actions at the Bennington Landfill Superfund Site in Bennington, Vermont ("Site"), together with accrued interest; and (2) performance of response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Vermont (the "State") on July 24, 1995, of negotiations with potentially responsible parties regarding the implementation of the non-time critical removal action ("NTCRA") for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State of Vermont has also filed a complaint against the defendants, except for the State of Vermont Agency of Transportation, in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and 10 Vt.Stat. Ann. Ch. 159, § 6615.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the federal natural resource trustee(s) on July 20, 1995, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

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

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31, 1989, 54 Fed. Reg. 13,295.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, 12 Potentially Responsible Parties ("PRPs") commenced in June 1991, a Remedial Investigation and Feasibility Study ("RI/FS"), pursuant to two Administrative Orders by Consent, EPA Docket Nos. CERCLA I-91-1093 and CERCLA I-91-1094, for the Site pursuant to 40 C.F.R. § 300.430.

I. Based upon the preliminary results of the RI/FS, the EPA required the parties to the RI/FS Administrative Orders to prepare an engineering evaluation and cost analysis ("EE/CA"). EPA signed an approval memorandum for the EE/CA in May 1994. Based upon the EE/CA, the public was provided the opportunity to comment on a proposed NTCRA for the Site.

EPA held a 45-day public comment period and a transcribed public hearing was held on September 13, 1994. After consideration of the comments received, EPA signed and issued an Action Memorandum on December 23, 1994, selecting the proposed alternative as the NTCRA. The NTCRA authorized the following response actions at the Site: (1) construction of a composite barrier low permeability cap; (2) excavation, from the drainage pond and underdrain discharge pipe, of those contaminated soils and sediments which exceed the action levels; (3) consolidation, in the existing landfill, of such contaminated soils and sediments; (4) gas management; (5) isolation of the upgradient groundwater from the landfill; (6) monitoring; and (7) post-removal site control of the completed NTCRA.

J. The decision by EPA on the NTCRA is embodied in the Action Memorandum, executed on December 23, 1994. Before EPA signed the Action Memorandum, the State had a reasonable opportunity to review and comment on the decision.

K. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by the Performing Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

L. The United States Department of Interior ("DOI") has identified and prepared a preliminary evaluation of potential damages relating to possible injury to, destruction of, or loss of Natural Resources under its trusteeship in connection with the Site.

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

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

O. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54(b).

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

II. JURISDICTION

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

III. PARTIES BOUND

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

3. Performing 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 Performing Settling Defendant with respect to 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. Performing 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. Performing 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 Performing Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

"Action Memorandum" shall mean the decision document signed by the EPA New England Regional Administrator on December 23, 1994, selecting the non-time-critical removal action for the Bennington Landfill Site.

"Active Remediation" shall mean any long-term remedial action using engineering controls or mechanisms to intercept, treat, or restore contaminated groundwater (e.g., groundwater extraction wells, slurry wall, interceptor trench, french drain) and shall not include any response action implemented as part of the Removal Action or any natural attenuation remedial action.

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

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

"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.

"De Minimis Defendants" shall mean those parties listed in Appendix E who execute this Consent Decree, unless disqualified from participating as *De Minimis* Defendants pursuant to Paragraph 105 of this Consent Decree.

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

"DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities thereof.

"Effective Date" shall mean the effective date of this Consent Decree as provided in Paragraph 132.

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

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.12.

"Federal Natural Resource Damages" shall mean damages recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Site under the trusteeship of DOI or NOAA, including the costs of assessing such injury, destruction or loss.

"Future Response Costs" shall mean all costs, direct and indirect, not inconsistent with the NCP, other than Oversight Costs and Monitoring costs, incurred by the United States or the State after the effective date of this Consent Decree related to the Site, including but not limited to, costs that the United States and the State incur or may incur: (i) in developing any plans, reports or other items which Settling Defendants are required, but otherwise failed, to submit under this Consent Decree; (ii) in modifying any plan, reports, and other items by EPA pursuant to Section XI (EPA Approval of Plans and Other Submittals), except for costs related to the review of any such submissions; (iii) in implementing the Removal Action under Paragraph 95 this Consent Decree; (iv) in enforcing the terms of this Consent Decree; (v) in connection with Sections IX (Access and Institutional Controls) (including but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), XV (Emergency Response), and XXI (Covenants not to Sue by Plaintiffs); and (vi) in connection with Section VII (Remedy Review).

"Institutional Controls" shall mean covenants, conditions, restrictions and other equivalent requirements and controls developed for one or more of the following purposes: (1) to restrict the use of groundwater at the Site; (2) to limit human or animal exposure to Landfill-related waste material at the Site; (3) to ensure non-interference with the performance, post-removal site control and monitoring of the cap, gas collection system, underdrain collection system, and the upgradient groundwater diversion system at or pertaining to the Site; and (4) to maintain the integrity and effectiveness of the cap, gas collection system, underdrain collection system, and upgradient groundwater diversion system that comprise the Removal Action and any other response actions at or pertaining to the Site.

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

"Monitoring Costs" shall mean response costs to be incurred by EPA or the State in connection with performance of monitoring described in Section VIII of the SOW.

"Monitoring" shall mean the monitoring to be performed by EPA or the State as described in Section VIII of the SOW.

"Municipal Solid Waste" shall mean all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act (42 U.S.C. 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Natural Resource Damages" shall mean damages recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Site under the trusteeship of DOI, NOAA, or the State, including the reasonable costs of assessing such injury, destruction, or loss.

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

"NOAA" shall mean the National Oceanic and Atmospheric Administration, and any successor departments, agencies, or instrumentalities thereof.

"NRD Restoration" shall mean all activities Performing Settling Defendants are required to perform under this Consent Decree and the NRD SOW.

"NRD Statement of Work" or "NRD SOW" shall mean the statement of work for implementation of the NRD Restoration, as set forth in Appendix C to this Consent Decree.

"NTCRA" or "Removal Action" shall mean the non-time-critical removal action selected by EPA in the Action Memorandum for the Site signed by the EPA New England Regional Administrator on December 23, 1994.

"NTCRA Design" shall mean those activities to be undertaken by the Performing Settling Defendants to develop the final plans and specifications for the NTCRA pursuant to the NTCRA Order and this Consent Decree.

"NTCRA Order" shall mean the Administrative Order on Consent for Removal Action Design, EPA Docket No. CERCLA-I-96-1014, addressing the design of the NTCRA at the Site.

"Oversight Costs" shall mean all costs, including but not limited to, direct and indirect costs, that the United States and/or the State (in its regulatory capacity and not as a PRP) incur on and after the effective date of the NTCRA Order in reviewing plans, reports and other items pursuant to the NTCRA Order or this Consent Decree, verifying the Work, or otherwise overseeing the NTCRA Order or this Consent Decree, including but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs. Oversight Costs do not include costs related to performance of monitoring activities as described by Section VIII of the SOW.

"Owner Settling Defendant" shall mean the Town of Bennington, Vermont.

"Owner, Operator, or Lessee of Residential Property" shall mean a person who owns, operates, manages, or leases Residential Property and who uses or allows the use of the Residential Property exclusively for residential purposes.

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

"Parties" shall mean the United States, the State of Vermont, and the Settling Defendants.

"Past Response Costs" shall mean all costs, including but not limited to, direct and indirect costs, that the United States and/or the State incurred and/or paid at or in connection with the Site until the effective date of the NTCRA Order, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a), through such date. Past Response Costs shall not include costs recoverable under two Administrative Orders on Consent for the RI/FS, U.S. EPA Docket Nos. CERCLA I-91-1093 and CERCLA I-91-1094, or the NTCRA Order.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the NTCRA, set forth in Section V.A.5 of the Action Memorandum and Section IV of the SOW.

"Performing Settling Defendants" shall mean those parties who have performed, or who will perform response actions at the Site pursuant to the NTCRA Order and this Consent Decree. A list of those parties is attached in Appendix F.

"Plaintiffs" shall mean the United States and the State.

"Post-Removal Site Control" or "PRSC" shall mean all activities required to maintain the integrity and effectiveness of the NTCRA as required under the Post-Removal Site Control Plan approved or developed by EPA pursuant to this Consent Decree and Section VII of the Statement of Work (SOW).

"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).

"Residential Property" shall mean single or multi-family residences, including accessory land, buildings, or improvements incidental to such dwellings, which are exclusively for residential use.

"Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

"RI/FS Orders" shall mean the Administrative Orders by Consent for the performance of the RI/FS and for the recovery of costs relating to the RI/FS, U.S. EPA Docket Nos. CERCLA I-91-1093 and CERCLA I-91-1094, respectively, entered into by EPA and the following parties in 1991: Banner Publishing Corporation, Town of Bennington, Bennington Iron Works, Inc., Bijur Lubricating Corporation, Chemical Fabrics Corporation, Courtaulds Structural Composites, Inc., East Mountain Transport, Environmental Action, Inc., Eveready Battery Corporation, G.C.D.C., Inc., Johnson Controls, Inc., and Textron, Inc.

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

"Settling Defendants" shall mean those Parties identified in Appendix E (De Minimis Defendants), and Appendix F (Performing Settling Defendants).

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

"Site" shall mean the Bennington Landfill Superfund Site, encompassing approximately 28 acres of land located on Houghton Lane approximately three miles north of the town center in Bennington, Vermont, including the approximately 15 acres comprising the landfill itself, the associated contaminated soils and sediments in the drainage pond and underdrain, the related groundwater and surface water contamination, and all areas in close proximity to the contamination necessary for implementation of the NTCRA, Post-Removal Site Control, or Site Monitoring.

"Small Business" shall mean any business entity that employs no more than 100 individuals and is a "small business concern" as defined under the Small Business Act (15 U.S.C. 631 et seq.).

"Small Nonprofit Organization" shall mean any organization that does not distribute any part of its income or profit to its members, directors, or officers, employs no more than 100 paid individuals at the involved chapter, office, or department, and was recognized as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code of 1986.

"State" shall mean the State of Vermont, acting through its Agency of Natural Resources.

"State Natural Resource Damages" shall mean damages recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Site under the trusteeship of the State, including the costs of assessing such injury, destruction or loss.

"State Settling Defendant" shall mean the State of Vermont Agency of Transportation.

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

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

"Supplemental Institutional Controls" shall mean Institutional Controls (other than those which are required pursuant to Paragraph 26 below) that are developed, requested, or approved by EPA for one or more of the following purposes: (1) to ensure non-interference with the performance, operation and maintenance of any response actions at or pertaining to the Site, other than the response action selected in the Action Memorandum; (2) to ensure the integrity and effectiveness of any response actions at or pertaining to the Site, other than the response action selected in the Action Memorandum; and (3) to otherwise ensure the protection of public health, welfare, or the environment at and in connection with the Site.

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

"VTDEC" shall mean the Vermont Department of Environmental Conservation and any successor departments or agencies of the State.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "hazardous material" under 10 Vt. Stat. Ann. § 6602(16).

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

V. GENERAL PROVISIONS

5. Objectives of the Parties

a. As to the Performing Settling Defendants The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment at the Site by the design and implementation of response actions at the Site by the Performing Settling Defendants, to reimburse certain Response Costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Performing Settling Defendants as provided in this Consent Decree.

b. As to the De Minimis Defendants The objectives of the Parties are:

i. to reach a final settlement with the *De Minimis* Defendants with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows *De Minimis* Defendants to make a cash payment, including a premium, to resolve their alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for Response Costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

ii. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a number of potentially responsible parties from further involvement at the Site; and

iii. to obtain settlement with *De Minimis* Defendants for their fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by private parties, and to provide for full and complete contribution protection for *De Minimis* Defendants with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

6. Commitments by Settling Defendants

a. *De Minimis* Defendants shall make the payments as set forth in Appendix G, and Performing Settling Defendants shall finance and perform the Work and the NRD Restoration in accordance with this Consent Decree, the Action Memorandum, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Performing Settling Defendants and approved by EPA pursuant to this Consent Decree. Performing Settling Defendants shall also reimburse the United States and the State for Future Response Costs and Oversight Costs as provided in this Consent Decree.

b. The obligations of Performing Settling Defendants to finance and perform the Work and the NRD Restoration and to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Performing Settling Defendants to implement the requirements of this Consent Decree, the remaining Performing Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law All activities undertaken by Performing Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Performing 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 Action Memorandum and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state or local permit or approval, Performing Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Performing Settling Defendants may seek relief under the provisions of Section XVIII (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 the Performing Settling Defendants submitted timely and complete applications and took all other actions necessary to obtain such permit.

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

9. Notice of Obligations to Successors-in-Title

a. With respect to any property owned or controlled by any of the Performing Settling Defendants that is located within the Site, within 15 days after the entry of this Consent Decree, each such Performing Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Land Records of the Town of Bennington, Vermont, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a response action for the Site on December 23, 1994, and that a Consent Decree requiring the implementation of the response action by potentially responsible parties exists. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Such notice(s) shall be filed within 10 days of EPA's approval of the notice(s). Performing Settling Defendants shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

b. At least 30 days prior to the conveyance of any interest in property located within the Site, including but not limited to, fee interests, leasehold interests, and mortgage interests, the Performing Settling Defendant conveying the interest shall give the grantee written notice of this Consent Decree and any instrument by which an interest in real property has been conveyed that confers a right of access to the Site or any other property (hereinafter referred to as "access easements"), and any Institutional Controls in the form of deed restrictions that have been filed with respect to the property pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Performing Settling Defendant conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree and access easements or Institutional Controls in the form of deed restrictions was given to the grantee. In the event of any such conveyance, the Performing Settling Defendants' obligations under this Consent Decree, including their obligations to provide or secure access and Institutional Controls, as well as abide by such Institutional Controls, pursuant to Section IX (Access and Institutional Controls), shall continue to be met by the Performing Settling Defendants. In no event shall the conveyance release or otherwise affect the liability of the Performing Settling Defendants to comply with all provisions of this Consent Decree. If the United States approves, after a reasonable opportunity for review and comment by the State, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF WORK BY PERFORMING SETTLING DEFENDANTS

10. Designation of Supervising Contractor.

a. All aspects of the Work to be performed by Performing Settling Defendants pursuant to Sections VI (Performance of the Work by Performing Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection or change of which shall be subject to disapproval by EPA.

after a reasonable opportunity for review and comment by the State. Unless already accomplished under the NTCRA Order, within seven (7) days after the effective date of this Consent Decree, the Performing Settling Defendants shall retain the services of a qualified and experienced Supervising Contractor for the purpose of performing the Work required by this Consent Decree in accordance with the terms and conditions of the Statement of Work. Within the same seven (7) day period, the Performing Settling Defendants shall notify EPA and the State in writing of the name, address, and qualifications of the proposed Supervising Contractor and the name and telephone number of the Supervising Contractor's primary contact person. The Performing Settling Defendants shall also notify EPA and the State of the identity and qualifications of any other contractor(s) (and of the identity only of any subcontractor(s)) to be used at the Site at least fourteen (14) days in advance of their performing any work under this Consent Decree. If at any time thereafter, Performing Settling Defendants propose to change a Supervising Contractor, Performing Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. The Supervising Contractor shall be a qualified and certified professional engineer with substantial expertise and experience in the cleanup of hazardous waste sites. EPA reserves the right to disapprove any contractor or subcontractor or other person engaged directly or indirectly by the Performing Settling Defendants to conduct work activities under this Consent Decree. If EPA disapproves the selection of any proposed contractor, the Performing Settling Defendants shall notify EPA and the State in writing of the name, address, and qualifications of another contractor within fourteen (14) days after receipt of the notice of disapproval.

c. The Performing Settling Defendants have designated a Project Coordinator who shall be responsible for the administration of all the Performing Settling Defendants' actions required pursuant to the NTCRA Order and this Consent Decree.

11. In order to expedite design of the NTCRA at the Site, Performing Settling Defendants have agreed to commence and perform design of the NTCRA pursuant to the NTCRA Order. Performing Settling Defendants shall perform the design of the NTCRA regardless of whether this Consent Decree is entered by the Court. Upon the effective date of this Consent Decree, this Consent Decree shall govern the performance of the Work by the Performing Settling Defendants, and all ongoing obligations existing pursuant to the NTCRA Order shall continue without interruption, shall be incorporated into this Consent Decree, and shall be enforceable obligations under this Consent Decree. Upon the effective date of this Consent Decree, all obligations, duties, burdens and sanctions arising under the NTCRA Order will be subject to enforcement pursuant to this Consent Decree, including but not limited to, stipulated penalties, retroactive to the effective date of the NTCRA Order, but no obligation, duty, penalty or sanction already performed or imposed under the NTCRA Order shall be required or imposed a second time under the Consent Decree, and the provisions of the Consent Decree and NTCRA Order shall be construed accordingly. Upon the effective date of this Consent Decree, all Oversight Costs incurred subsequent to the effective date of the NTCRA Order but prior to the entry of the Consent Decree shall be included in the estimation of Oversight Costs to be reimbursed or deducted in accordance with Section XVI (Reimbursement of Costs).

12. NTCRA. Upon the effective date of this Consent Decree, the Performing Settling Defendants shall commence the work detailed in the Statement of Work to perform the Removal

Action. The Removal Action shall be designed, constructed, and maintained to meet the Performance Standards. As detailed in the Statement of Work, and subject to the condition set forth in the preceding sentence, the Performing Settling Defendants shall design, construct, and/or perform:

- a. a composite barrier low permeability cap with drainage controls;
- b. the excavation of contaminated soils and sediments exceeding action levels from the drainage pond and underdrain discharge pipe area and consolidate them with the existing landfill;
- c. a gas management system;
- d. air monitoring activities as part of the Demonstration of Compliance Plan to verify that no air emissions occur which exceed applicable or relevant and appropriate state or federal limits or which represent an unacceptable threat to human health, until EPA approval of the Demonstration of Compliance Report;
- e. for as long as required to meet the Performance Standards, collection of leachate and groundwater from the existing underdrain discharge and treatment off-site, to remove contaminants, or treatment in some other manner previously approved by EPA under this Consent Decree and the SOW;
- f. a structure (e.g., slurry wall or interceptor trench) to prevent groundwater in the water table aquifer from coming into contact with the landfill waste material;
- g. Post-Removal Site Controls include operation and maintenance of the gas collection and treatment system, the multi-barrier cap, the leachate collection system, and the groundwater isolation system and the installation of any monitoring points necessary to evaluate the effectiveness of the NTCRA. These Post-Removal Site Controls shall be implemented to ensure the long-term effectiveness and integrity of each component of the NTCRA and shall continue for as long as required to meet the Performance Standards;
- h. the installation of any water table aquifer monitoring points to evaluate the effectiveness of the NTCRA which are requested by EPA prior to the date of EPA approval of the Completion of Removal Action Report; and
- i. implementation of institutional controls, including access restrictions, deed restrictions, land-use restrictions, groundwater use restrictions, or easements and/or other controls, including fencing, to prohibit the future use of the Site in any manner that would compromise the integrity of the cap and its related systems.

All Work performed by the Performing Settling Defendants shall be conducted in accordance with CERCLA, the NCP, applicable guidance documents provided by EPA, and the provisions of this Consent Decree including any standards, specifications, and time schedules contained in the Statement of Work or specified by the Remedial Program Manager ("RPM"). Subsequent to EPA's approval of the Completion of Removal Action Report pursuant to Paragraph 53 of this Consent Decree, the Performing Settling Defendants shall not be obligated to perform or reimburse EPA or the State for Monitoring required pursuant to Section VIII of the SOW or any

Monitoring which may be selected as part of any Record Of Decision. It is the intent of EPA and the VT DEC, subsequent to EPA's approval of the Completion of Removal Action Report, to perform such Monitoring specified in Section VIII of the SOW, namely, periodic assessment of ambient air quality, periodic sampling of the groundwater and air collection systems, and long-term monitoring of contaminant levels and water levels to evaluate the impact of the cap. Notwithstanding the above, performance of Monitoring by EPA and the VTDEC under the Action Memorandum is subject to EPA and VT DEC budgetary considerations and the availability of funds for such Monitoring. EPA and VTDEC will make good faith efforts to obtain funding to perform all such Monitoring. In the event that EPA or VT DEC do not perform the Monitoring due to budgetary constraints or for any other reason, neither the EPA nor VT DEC shall seek to require any of the Settling Defendants to perform or fund the Monitoring whether under this Consent Decree or through any other proceeding or action. Nothing in this Consent Decree requires, or shall be interpreted to require, obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

13. NRD Restoration. The Performing Settling Defendants shall perform the NRD Restoration required by the NRD SOW attached hereto as Appendix C, which is hereby incorporated into this Consent Decree.

14. Modification of the SOW or Related Work Plans.

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

b. For the purposes of this Paragraph 14 and Paragraphs 52 and 53 only, the "scope of the response action selected in the Action Memorandum" is: Containment and isolation of Waste Materials (including landfill solid waste materials), collection, treatment (if necessary), and disposal of underdrain discharge, consolidation of PCB contaminated soils and sediments into the landfill, and minimization of migration of contamination from the source area. However, the "scope of the response action selected in the Action Memorandum" does not encompass Active Remediation.

c. If Performing Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Paragraph 70 (record review) of Section XIX (Dispute Resolution). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Performing Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Except with respect to Monitoring, nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Performing Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or any work plans related to the SOW constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the SOW and any related work plans will achieve the Performance Standards.

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

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

b. The identity of the receiving facility and state will be determined by the Performing Settling Defendants following the award of the contract for NTCRA construction. The Performing Settling Defendants shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

17. Periodic Review. Performing Settling Defendants shall conduct any studies and investigations as requested by EPA, after a reasonable opportunity for review and comment by the State, in order to permit EPA to conduct reviews of whether the Removal Action is protective of human health and the environment at least every five years.

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

19. Opportunity To Comment. Performing Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of any review conducted pursuant to Paragraph 17 of this Consent Decree or Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Performing Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Performing Settling Defendants shall undertake such further response actions, other than Active Remediation, to the extent that the reopener conditions in Paragraph 89 or Paragraph 90 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Performing Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 89 or Paragraph 90 of Section XXI

(Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's determination that the Removal Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Removal Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 70 (record review).

21. **Submissions of Plans.** If Performing Settling Defendants are required to perform the further response actions pursuant to Paragraph 20, they shall submit a plan for such work to EPA and the State for approval by EPA in accordance with the procedures set forth in Section VI (Performance of Work by Performing Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

22. Performing Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to Performing Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Performing Settling Defendants shall submit to EPA and the State for approval by EPA, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and any applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Settling Defendants in implementing this Consent Decree. In addition, Performing Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Performing Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods include, but are not limited to, those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Performing Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Performing Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, the Performing Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Performing Settling Defendants shall notify EPA and the State not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA, after a reasonable opportunity for review and comment by the State. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Performing Settling Defendants to take split or duplicate samples

of any samples they take as part of the Plaintiffs' oversight of the Performing Settling Defendants' implementation of the Work.

24. Performing Settling Defendants shall submit to EPA and the State two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA (or the State with respect to its own copies only) agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. a. Commencing upon the date of the EPA Regional Administrator's signature on this Consent Decree, the Performing Settling Defendants agree to provide the United States, the State, and their representatives, including EPA and its contractors, with access at all reasonable times to the Site and any other property to which access is required to implement this Consent Decree, the SOW, the response action selected in the Action Memorandum, and any remedy selected in a Record of Decision for the Site, to the extent that the property is owned by, or access to the property is controlled by, any of the Performing Settling Defendants, for the purpose of conducting any activity related to this Consent Decree including but not limited to, the following activities:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States or the State;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Implementing the Work pursuant to the conditions set forth in Paragraph 95 of this Consent Decree;
- vii. 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);
- viii. Assessing Performing Settling Defendants' compliance with this Consent Decree; and
- ix. Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by

Paragraph 27 of this Consent Decree, the Institutional Controls established pursuant to this Consent Decree, or Supplemental Institutional Controls.

b. If EPA so requests, in regard to property owned or controlled by one or more of the Performing Settling Defendants to which access is needed to implement this Consent Decree, the SOW, the response action selected in the Action Memorandum, or any remedy selected in a Record of Decision for the Site, for each parcel of property such Performing Settling Defendants shall record in the Land Records of the Town of Bennington, Vermont, access easements that grant to one or more of the following persons or entities, as directed by EPA:

- (1) the United States, on behalf of EPA, and its representatives,
- (2) the State and its representatives,
- (3) the other Performing Settling Defendants and their representatives, or
- (4) other appropriate grantees,

a right of access, running with the land, for the purpose of conducting any activity related to this Consent Decree including but not limited to, those activities listed in Subparagraph a. of this Paragraph. Performing Settling Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

i. Draft access easements that are enforceable under the laws of the State of Vermont, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of such easements, Performing Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the easements with the Land Records of the Town of Bennington, Vermont. Within 30 days of filing the easements, Performing Settling Defendants shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded easements showing the clerk's recording stamps.

c. To the extent that the Site or any other property to which access is required to implement this Consent Decree, the SOW, the response action selected in the Action Memorandum, or the remedy selected in a Record of Decision for the Site, is owned or controlled by persons other than a Performing Settling Defendant, Performing Settling Defendants shall use best efforts to secure from such persons access thereto for Performing Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related

to this Consent Decree including but not limited to, those activities listed in Subparagraph a. of this Paragraph.

d. If EPA so requests, to the extent that the Site or any other property to which access is required to implement this Consent Decree, the SOW, the response action selected in the Action Memorandum, or the remedy selected in a Record of Decision for the Site, is owned or controlled by persons other than a Performing Settling Defendant, Performing Settling Defendants shall also use best efforts to secure from such persons the recordation in the Land Records of the Town of Bennington, Vermont, of access easements that grant to one or more of the following persons or entities, as directed by EPA:

- (1) the United States, on behalf of EPA, and its representatives,
- (2) the State and its representatives,
- (3) the other Performing Settling Defendants and their representatives, or
- (4) other appropriate grantees,

a right of access to the property, running with the land, for the purpose of conducting any activity related to this Consent Decree, including but not limited to, those activities listed in Subparagraph a. of this Paragraph. If such access easements are requested, Performing Settling Defendants shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access and/or access easements. If any access required by Subparagraph c. is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Performing Settling Defendants in writing that additional access beyond that previously secured is necessary, or if any access easements requested by EPA under Subparagraph d. are not submitted to EPA in draft form within 45 days of a request by EPA for such easements, Performing Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Performing Settling Defendants have taken to attempt to obtain access or access easements. The United States may, as it deems appropriate, assist Performing Settling Defendants in obtaining access or access easements. Performing Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access or access easements, including but not limited to, attorneys fees and the amount of monetary consideration paid. Such costs shall be considered Future Response Costs.

27. a. Commencing upon the date of the EPA Regional Administrator's signature on this Consent Decree, the Performing Settling Defendants also agree to refrain from using the Site (or any other property affected by the response action selected in the Action Memorandum or the remedy selected in a Record of Decision for the Site) in any manner, or engaging in any other activities, that would interfere with or adversely affect the integrity or protectiveness of the

response action selected in the Action Memorandum or the remedy selected in a Record of Decision for the Site.

b. If EPA so requests, in regard to property owned or controlled by one or more of the Performing Settling Defendants, at which Institutional Controls are needed, each such Performing Settling Defendant shall

i. grant to one or more of the following persons or entities, as directed by EPA:

- (1) the United States, on behalf of EPA, and its representatives,
- (2) the State and its representatives,
- (3) the other Performing Settling Defendants and their representatives, or
- (4) other appropriate grantees, and

ii. record in the Land Records of the Town of Bennington, Vermont, Institutional Controls in the form of deed restrictions, running with the land, that impose the obligations and restrictions identified in Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the response action selected in the Action Memorandum or the remedy selected in a Record of Decision for the Site.

Performing Settling Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

iii. Draft deed restrictions that are enforceable under the laws of the State of Vermont, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

iv. a current title commitment or report prepared in accordance with the Standards.

Within 15 days of EPA's approval and acceptance of such deed restrictions, Performing Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the deed restrictions with the Land Records of the Town of Bennington. Within 30 days of filing the deed restrictions, Performing Settling Defendants shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and a certified copy of the original recorded deed restrictions showing the clerk's recording stamps.

c. To the extent that the Site or any other property at which Institutional Controls are needed is owned or controlled by persons other than a Performing Settling Defendant, Settling Defendants shall use best efforts to secure a commitment by such persons

to abide by the obligations and restrictions established by Subparagraph a. of this Paragraph.

d. If EPA so requests, to the extent that the Site or any other property at which Institutional Controls are needed is owned or controlled by persons other than a Performing Settling Defendant, Performing Settling Defendants shall also use best efforts to secure from such persons the

i. granting to one or more of the following persons or entities, as directed by EPA:

- (1) the United States, on behalf of EPA, and its representatives,
- (2) the State and its representatives,
- (3) the other Performing Settling Defendants and their representatives, or
- (4) other appropriate grantees, and

ii. recordation in the Land Records of the Town of Bennington, Vermont, of Institutional Controls in the form of deed restrictions, running with the land, that impose the obligations and restrictions identified in Subparagraph a. of this Paragraph or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the response action to be performed pursuant to this Consent Decree. If such deed restrictions are requested, Performing Settling Defendants shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of Institutional Controls in the form of commitments or deed restrictions. If any commitments required under Subparagraph c. are not obtained within 45 days of the date of lodging of this Consent Decree, or any deed restrictions requested by EPA under Subparagraph d. of this Paragraph are not submitted to EPA in draft form within 45 days of EPA's request for such deed restrictions, Performing Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Performing Settling Defendants have taken to attempt to obtain such commitments or deed restrictions. The United States may, as it deems appropriate, assist Performing Settling Defendants in obtaining such commitments or deed restrictions. Performing Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining such commitments or deed restrictions, including but not limited to, attorneys fees and the amount of monetary consideration paid. Such costs shall be considered Future Response Costs.

28. If EPA determines that land and/or water use restrictions in the form of state or local laws, regulations, ordinances or other governmental action are needed to implement the response action selected in the Action Memorandum or the remedy selected in a Record of Decision for the Site, ensure the integrity and protectiveness thereof, or ensure non-interference

therewith, Performing Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

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

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Performing Settling Defendants shall submit to EPA and the VTDEC 1 copy each of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Performing Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Performing Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Performing Settling Defendants shall submit these progress reports to EPA and the VTDEC by the fifteenth day of every month following the effective date of this Consent Decree until EPA approves the Completion of Removal Action Report. After EPA approval of the Completion of Removal Action Report pursuant to this Consent Decree, the Performing Settling Defendants shall submit to the EPA and the VT DEC one copy each of a written, quarterly progress report containing the above-listed information by the tenth day of each calendar quarter beginning in March, June, September and December of each year concerning activities undertaken by the Performing Settling Defendants pursuant to this Consent Decree. Notwithstanding the above, after completion of two (2) years of Post-Removal Site Control pursuant to the NTCRA and this Consent Decree, the progress reports required pursuant to this Section may be submitted on an annual basis. If requested by EPA or the VTDEC, Performing Settling Defendants shall also provide briefings for EPA and the VTDEC to discuss the progress of the Work.

31. The Performing Settling Defendants shall notify EPA of any change in the schedule described in the monthly, quarterly, or annual progress reports for the performance of any activity, including but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Performing Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11001 *et seq.*, Performing Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project

Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region I, United States Environmental Protection Agency. The EPA Project Coordinator's and Alternate Project Coordinator's current telephone numbers are (617) 573-5782 and (617) 573-5781, respectively. Within the same 24-hour period, Performing Settling Defendants also shall orally notify the VTDEC Project Manager, or in his or her absence, the emergency response phone number at (800) 641-5005 or, within Vermont, at (802) 244-8721. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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

34. Unless otherwise directed by EPA, after a reasonable opportunity for review and comment by the State, the Performing Settling Defendants shall submit 4 copies of all plans, reports, and data required by the SOW, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Performing Settling Defendants shall simultaneously submit 2 copies of all such plans, reports and data to the State.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall:

- a. approve, in whole or in part, the submission;
- b. approve the submission upon specified conditions;
- c. modify the submission to cure the deficiencies;
- d. disapprove, in whole or in part, the submission, directing that the Performing Settling Defendants modify the submission; or
- e. any combination of the above.

However, EPA shall not modify a submission without first providing Performing Settling Defendants at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36.a, 36.b, or 36.c, Performing 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 XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36.c and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

38. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36.d, Performing Settling Defendants shall, within 30 days or such longer time as specified by EPA in such notice, after a reasonable opportunity for review and comment by the State, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX (Stipulated Penalties), shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36.d, Performing Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Performing Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

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

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Performing Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Performing Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX (Stipulated Penalties).

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

42. Deliverables Requiring Performing Settling Defendants' Certification. Each deliverable requiring Performing Settling Defendants' certification as specified in the SOW shall be certified by the Performing Settling Defendants as provided below. Upon submittal to EPA,

the Performing Settling Defendants shall proceed with the next scheduled activity consistent with the deliverable without further notification or approval by EPA. Each such deliverable shall include the following certification signed by the Performing Settling Defendants' Project Coordinator:

I certify, to the best of my knowledge and professional judgment, and after appropriate inquiries of all relevant persons involved in the preparation of this deliverable, that all guidance documents which relate to this deliverable were reviewed in preparation of this deliverable. I further certify that the contents of this deliverable comply with the requirements of the SOW and all guidance documents which relate to this deliverable. I am aware that EPA may assess stipulated penalties for submission of a deliverable that is not in compliance with the requirements of the SOW, and all guidance documents specified in the SOW which relate to this deliverable. Under penalty of law, I further certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this deliverable, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

43. EPA, at its discretion, may provide comments to the Performing Settling Defendants concerning any deliverable requiring Performing Settling Defendants' certification, and may disapprove the deliverable and notify the Performing Settling Defendants of deficiencies. Before taking any action under this Paragraph, EPA shall provide the State with a reasonable opportunity for review of and comment on such action. Upon receipt of a notice of disapproval with deficiencies, the Performing Settling Defendants shall correct the deficiencies and resubmit the deliverable within fourteen (14) days or such other time period specified by EPA in the notice of disapproval. Notwithstanding a notice of disapproval, the Performing Settling Defendants shall proceed to take any action required by any non-deficient portion of the deliverable. If EPA disapproves the deliverable as resubmitted, the Performing Settling Defendants shall be in violation of the Consent Decree and subject to stipulated penalties pursuant to Section XX (Stipulated Penalties) of this Consent Decree.

XII. PROJECT COORDINATORS

44. Unless already accomplished under the NTCRA Order, within 20 days of lodging this Consent Decree, Performing Settling Defendants, the State, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Performing Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Performing Settling Defendants' Project Coordinator shall not be an attorney for any of the Performing 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 performance of the Removal Action activities.

45. EPA will deem the Performing Settling Defendants' Project Coordinator's receipt of any notice or communication from EPA relating to this Consent Decree as receipt by the Performing Settling Defendants.

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

47. EPA's Project Coordinator and the Performing Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis, or as mutually agreed by the parties. The State's Project Manager shall be provided reasonable advance notice of each meeting and afforded a reasonable opportunity to participate.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

48. Within 30 days of entry of this Consent Decree, Performing Settling Defendants shall establish and maintain financial security in the amount of \$6 million in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equalling the total estimated cost of the Work;
- c. A trust fund;
- d. 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 Performing Settling Defendants; or
- e. A demonstration that one or more of the Performing Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

49. If the Performing Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 48.d of this Consent Decree, Performing Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Performing Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 48.d or 48.e, they shall submit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) within 30 days of the effective date of this Consent Decree and as may be requested by EPA. The Performing Settling Defendants shall notify EPA of any change to any Performing Settling Defendants' financial condition, if such financial condition formed the basis for the Performing Settling Defendants to meet the financial

test in 40 C.F.R. Part 264.143(f). In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Performing Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 48 of this Consent Decree. Performing Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

50. If Performing Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 48 above after entry of this Consent Decree, Performing Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Performing Settling Defendants shall submit a proposal for such reduction to EPA and the State, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA, after a reasonable opportunity for review and comment by the State. In the event of a dispute, Performing Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

51. Performing Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, after a reasonable opportunity for review and comment by the State, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Performing Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

52. Completion of the Removal Action

a. No later than 18 months from the effective date of the Consent Decree, the Performing Settling Defendants shall schedule and conduct a substantial completion inspection, to be attended by the Performing Settling Defendants, EPA, and the State. Within one-hundred and twenty (120) days of the Substantial Completion Inspection, the Performing Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Completion of Removal Action Report summarizing the activities conducted pursuant to the Statement of Work. Post-Removal Site Control activities shall not be considered part of the Substantial Completion Inspection or the Completion of Removal Action Report. The Completion of Removal Action Report shall include the categories of information, and shall conform to the requirements, specified in Section 300.165 of the NCP entitled "OSC Reports" and Section VI.A.5. of the Statement of Work. The Completion of Removal Action Report also shall include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the Substantial Completion Inspection and receipt and review of the Completion of Removal Action Report, EPA, after reasonable opportunity to review and comment by the State, determines that the Removal 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 Performing Settling Defendants in writing of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Removal Action and achieve the Performance Standards. However, EPA may only require Performing Settling Defendants to perform activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the response action selected in the Action Memorandum," as that term is defined in Paragraph 14.b. EPA, after a reasonable opportunity for review and comment by the State, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA and the State for approval by EPA, after a reasonable opportunity for review and comment by the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing 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 XIX (Dispute Resolution).

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

53. Completion of the Work

a. Within 90 days after Performing Settling Defendants conclude that all phases of the Work (including Post Removal Site Control), have been fully performed, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA and the State. If, after the pre-certification inspection, the Performing Settling Defendants still believe that the Work has been fully performed, Performing Settling Defendants shall submit to EPA and the State a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or the Performing Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after the pre-certification inspection and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has

not been completed in accordance with this Consent Decree, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Performing Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the response action selected in the Action Memorandum," as that term is defined in Paragraph 14.b. EPA, after a reasonable opportunity for review and comment by the State, will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA and the State for approval by EPA, after a reasonable opportunity for review and comment by the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing 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 XIX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

54. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Settling Defendants shall, subject to Paragraph 55, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. The EPA Project Coordinator's and Alternate Project Coordinator's current telephone numbers are (617) 573-5782 and (617) 573-5781, respectively. If neither of these persons is available, the Performing Settling Defendants shall notify the EPA Emergency Response Unit Region 1, telephone number (617) 223-7265. In addition, the Performing Settling Defendants shall also notify the VTDEC Emergency Response Program at telephone number 1-800-641-5005 or, within Vermont, at (802) 244-8721. Performing Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Performing Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State take such action instead, Performing Settling Defendants shall reimburse EPA or the State all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs). Any and all costs incurred by the EPA and/or the State relative to response actions taken by EPA or, as appropriate, the State in exercising authority under this paragraph shall be reimbursed by Performing Settling Defendants pursuant to the procedures for payment in Section XVI and shall not be subject to the \$750,000 Oversight Cost cap in Section XVI.

55. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the State: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or

threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiffs).

XVI. REIMBURSEMENT OF RESPONSE COSTS AND PAYMENTS FOR NATURAL RESOURCE DAMAGES

56. Performing Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Oversight Costs in excess of \$750,000 and all Future Response Costs not inconsistent with the National Contingency Plan. The United States will send Performing Settling Defendants a bill requiring payment that includes a Region I Oversight Cost Summary or Future Response Cost Summary on a periodic basis. The United States will also send the Performing Settling Defendants a periodic Region I Oversight Cost Summary (which will not be a bill) as documentation of the costs incurred by the United States and the State up to \$750,000. Each such standard Oversight Cost Summary shall include a narrative outlining the activities that were performed during the time period covered therein. Performing Settling Defendants shall make all payments within 30 days of Performing Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 57. The Performing Settling Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill Identification #01C2, the DOJ case number 90-11-3-868A, and the name and address of the party making payment. The Performing Settling Defendants shall send the check(s) to EPA Region I, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251 and shall send copies of the check(s) to the United States and EPA as specified in Section XXVII (Notices and Submissions).

57. Performing Settling Defendants may contest payment of any Future Response or Oversight Costs under Paragraph 56 if they determine that the United States or the State 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 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response or Oversight Costs and the basis for objection. In the event of an objection, the Performing Settling Defendants shall, within the 30 day period, pay all uncontested Future Response or Oversight Costs to the United States or the State in the manner described in Paragraph 56. Simultaneously, the Performing Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Vermont and remit to that escrow account funds equivalent to the amount of the contested Future Response or Oversight Costs. The Performing Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Future Response or Oversight Costs, and a copy of the correspondence that establishes and funds the escrow account, including but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Performing Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States or the State prevails in the dispute, within 5 days of the resolution of the dispute, the Performing Settling Defendants shall pay the sums due (with

accrued interest) to the United States or the State, if State costs are disputed, in the manner described in Paragraph 56. If the Performing Settling Defendants prevail concerning any aspect of the contested costs, the Performing Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the State, if State costs are disputed in the manner described in Paragraph 74; Performing Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Performing Settling Defendants' obligation to reimburse the United States and the State for their Future Response or Oversight Costs.

58. In the event that the payments required by Paragraph 56 are not made within 30 days of the Performing Settling Defendants' receipt of the bill, Performing Settling Defendants shall pay Interest on the unpaid balance. The Interest on Future Response or Oversight Costs shall begin to accrue on the date EPA mails the bill. The Interest shall accrue through the date of the Performing Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Performing Settling Defendants' failure to make timely payments under this Section. The Performing Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 56.

59. Payments for Natural Resource Damages.

a. In addition to performing the NRD Restoration, Performing Settling Defendants shall, within 30 days after receipt of written notice of entry of this Consent Decree, pay to the United States \$16,600 for past assessment costs and NRD Restoration oversight as Natural Resource Damages. The payment shall be made in the form of a certified check made payable to "U.S. Department of the Interior" and referencing Account Number 14X5198, DOJ Number 90-11-3-868A, the USAO number, and the name of the Site. The Performing 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 22203

and shall reference that the payment is for Natural Resource Damages for resources under the trusteeship of DOI with respect to the Bennington Site. Copies of the check paid pursuant to this subparagraph and any accompanying transmittal letter shall be sent to the United States and DOI as provided in Section XXVII (Notices and Submissions).

XVII. INDEMNIFICATION AND INSURANCE

60. a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Performing Settling Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Performing 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 Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Performing Settling Defendants agree to pay the United States and the State all costs they incur including but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Performing 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. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Performing Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Performing Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Performing Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 60.a, and shall consult with Performing Settling Defendants prior to settling such claim.

61. Performing Settling Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Performing 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, Performing Settling Defendants shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Performing 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.

62. No later than 15 days before commencing any on-site Work, Performing Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's approval of the Completion of Removal Action Report pursuant to Paragraph 52.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of three (3) million dollars, combined single limit, and automobile liability insurance with limits of one (1) million dollars, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, Performing Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Performing Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Performing Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Performing Settling Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Performing Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

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

64. If any event occurs or has occurred that has delayed or may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Performing Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I, within three working days of when Performing Settling Defendants first knew that the event might cause a delay. Within five (5) working days thereafter, Performing Settling Defendants shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Performing 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 Performing Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Performing 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 Performing Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Performing Settling Defendants shall be deemed to know of any circumstance of which Performing Settling Defendants, any entity controlled by Performing Settling Defendants, or Performing Settling Defendants' contractors knew or should have known.

65. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Performing Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Performing Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

66. If the Performing Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Performing 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 Performing Settling Defendants complied with the requirements of Paragraphs 64 and 65, above. If Performing Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Performing Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

67. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Settling Defendants or between the State and Settling Defendants arising under or with respect to this Consent Decree. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 67 to 72. The State may participate in such dispute resolution proceedings to the extent specified in Paragraphs 67 through 72. Disputes between the State and Settling Defendants are governed by Paragraph 74. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

68. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

69. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, after reasonable opportunity for review and comment by the State, shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the State 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 70 or Paragraph 71.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA, after reasonable opportunity for review and comment by the State, 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. The State may also serve a Statement of Position within the fourteen-day time limit set forth above in this Paragraph. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 70 or 71.

c. If there is disagreement between EPA* and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 70 or 71, 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 70 and 71.

70. 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 Action Memorandum's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Settling Defendants, EPA or the State.

b. The Director of the Office of Site Remediation and Restoration, EPA Region I, will issue, after reasonable opportunity for review and comment by the State, a final administrative decision resolving the dispute based on the administrative record described in Paragraph 70.a of this Section. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 70.c and 70.d.

c. Any administrative decision made by EPA pursuant to Paragraph 70.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may, within 30 days, file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office of Site Remediation and Restoration is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 70.a.

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

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 69, the Director of the Office of Site Remediation and Restoration, EPA Region I, after reasonable opportunity for review and comment by the State, will issue a final decision resolving the dispute. The Office of Site Remediation and Restoration Director's

decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may, within 30 days, file a response to Settling Defendants' motion.

b. 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 principles of law.

72. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA, after reasonable opportunity for review and comment by the State, or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 83. 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 Performing Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

73. Disputes solely between DOI and Performing Settling Defendants. Disputes arising under the Consent Decree between DOI and Performing Settling Defendants that relate to the assessment of stipulated penalties by DOI or the implementation of the NRD Restoration shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 67 through 72, except that each reference to EPA shall read as a reference to DOI, each reference to the Director of the Office of Site Remediation and Restoration, EPA Region I, shall be read as a reference to the Regional Director for Region 5 of the U.S. Fish & Wildlife Service, and any reference to "response action" shall be read as a reference to the NRD Restoration.

74. Disputes solely between the State and Performing Settling Defendants. Disputes arising under the Consent Decree between the State and Performing Settling Defendants that relate to Future Response Costs or Oversight Costs owed to the State or assessment of stipulated penalties by the State shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 67 - 72, except that each reference to EPA shall read as a reference to the VTDEC, each reference to the Director of the Office of Site Remediation and Restoration, EPA Region I, shall be read as a reference to the Commissioner of the VTDEC, and each reference to the United States shall be read as a reference to the State.

XX. STIPULATED PENALTIES

75. Performing Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 76 and 77 to the United States and the State for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). *De Minimis* Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 76 to the United States for failure to comply with the requirements pertaining to *De Minimis* Defendants (including but not limited to payment

provisions) of this Consent Decree. The United States shall receive 90% of the stipulated penalties received and the State shall receive 10% of the stipulated penalties received. "Compliance" by Performing 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, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

76. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance, except as addressed below in Paragraph 77, including but not limited to failure to provide access or institutional controls, failure to reimburse response costs, failure to comply with the schedule set forth in the SOW, and failure to submit timely or adequate deliverables including but not limited to, the Conceptual Design Letter Report, Intermediate Design Letter Report, 100% NTCRA Design, NTCRA Implementation Schedule, Demonstration of Compliance Plan, Health and Safety Plan, Post Removal Site Control Plan, Interim Completion of Removal Action Report, and Final Completion of Removal Action Report:

Penalty Per Violation Per Day	Period of Noncompliance
\$1,500	1st through 14th day
\$3,000	15th through 30th day
\$5,000	31st day and beyond

77. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate progress reports or financial assurance documentation pursuant to the SOW and this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
\$750	1st through 14th day
\$1,500	15th day and beyond

78. In the event that EPA or the State assumes performance of a portion or all of the Work pursuant to Paragraph 95 of Section XXI (Covenants Not to Sue by Plaintiffs), Performing Settling Defendants shall be liable for the following stipulated penalties:

\$700,000	If work performance is assumed before EPA approval of the 100% NTCRA Design covering the groundwater isolation system, sediment consolidation, leachate collection system, landfill cap, surface drainage system, and gas management system;
\$550,000	If work performance is assumed on or after the date EPA approves the 100% NTCRA Design and before the date EPA approves the Completion of Removal Action Report;

\$250,000	If work performance is assumed on or after the date EPA approves the Completion of Removal Action Report and before the date one year after initiation of Post-Removal Site Control; or
\$150,000	If work performance is assumed on or after the date one year after the initiation of Post-Removal Site Control.

Notwithstanding the foregoing provisions of this paragraph, if EPA determines that additional work is required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans) or Paragraph 20 (Performing Settling Defendants' Obligation To Perform Further Response Actions) and EPA or the State assumes performance of a portion or all of such Work pursuant to Paragraph 95 of Section XXI (Covenants Not to Sue by Plaintiffs), Performing Settling Defendants shall be liable for a stipulated penalty in the amount of \$550,000.

79. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Performing Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Office of Site Remediation and Restoration, EPA Region I, under Paragraph 70.b or 71.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Performing Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

80. Following EPA's determination, after a reasonable opportunity for review and comment by the State, that Performing Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Performing Settling Defendants written notification of the same and describe the noncompliance. EPA and the State may send the Performing Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA, or the State for the obligations specified below in Paragraph 85 of this Section, has notified the Performing Settling Defendants of a violation, except that any daily penalties shall not accrue after the thirtieth day of noncompliance until EPA has provided Performing Settling Defendants with notice of noncompliance pursuant to this Paragraph. Any EPA failure to notify Performing Settling Defendants of any noncompliance under this Consent Decree shall only affect the daily accrual of stipulated penalties with respect to the particular noncompliance for which notice has not been provided but not the accrual of penalties with respect to any other noncompliance.

81. All penalties accruing under this Section shall be due and payable to the United States and the State within 30 days of the Performing Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Performing Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Region 1, Attn: Superfund

Accounting, P.O. Box 360197M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill Identification #01C2, the DOJ Case Number 90-11-3-868A, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and EPA as provided in Section XXVII (Notices and Submissions). All payments to the State under this Section shall be paid by certified or cashier's check(s) made payable to "State of Vermont," shall be mailed to the Office of the Attorney General, 109 State Street, Montpelier, VT 05609-1001, and shall indicate that the payment is for stipulated penalties.

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

83. Penalties shall continue to accrue as provided in Paragraph 72 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Performing Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

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

84. DOI Assessment of Stipulated Penalties.

a. Assessment of stipulated penalties on behalf of DOI shall be governed in the following manner. Following DOI's determination that Performing Settling Defendants have failed to make the payment required by Subparagraph 59.a, failed to meet a deadline for completion of a task related to the NRD Restoration, or have failed to timely submit deliverables, if any, to DOI, DOI may give Performing Settling Defendants written notification of the same and describe the noncompliance. The provisions for liability, assessment and payment of the stipulated penalties referenced in this Paragraph shall be the same as provided in Paragraphs 79 through 83, except that each reference to EPA shall read as a reference to DOI, each reference to the SOW shall be read as a reference to the NRD SOW, each reference to the "Director of the Office of Site Remediation and Restoration, EPA Region I" shall be read as a reference to Regional Director for Region 5 of the U.S. Fish & Wildlife Service, each reference to the Work shall be read as a reference to the NRD Restoration, and each reference to the State's reasonable opportunity to review and comment shall be deleted.

b. The following stipulated penalties shall accrue per violation per day for failure to meet any of the deadlines set forth in the NRD SOW:

Penalty Per Violation Per Day	Period of Noncompliance
\$500	1st through 7th day
\$1,000	8th through 30th day
\$2,500	31st day and beyond

c. A stipulated penalty of \$500 per day shall accrue for failure to meet the payment obligation provided under Paragraph 59.a.

d. A stipulated penalty of \$400 per day shall accrue for each failure to meet a requirement of the NRD SOW not covered by Subparagraph 84.b.

e. All payments to the United States under this Paragraph shall be made in the form of a certified check made payable to "Treasurer of the United States", referencing DOJ Number 90-11-3-868A, the USAO number, and the name of the Site. The certified check, and an accompanying transmittal letter referencing the DOJ and USAO numbers, the name of the Site, and that the payment is for stipulated penalties in connection with the NRD Restoration and/or payment, shall be sent by certified mail, return receipt requested to DOI as provided in Section XXVII (Notices and Submissions). Copies of the check and the accompanying transmittal letter shall be sent to the United States and the State as provided in Section XXVII.

85. State Assessment of Stipulated Penalties. Assessment of stipulated penalties by the State shall be governed in the following manner. Following the State's determination that Performing Settling Defendants have failed to pay Future Response Costs or Oversight Costs owed to the State as required by Section XVIII (Reimbursement of Response Costs) or have failed to timely submit deliverables to the State, the State may give Performing Settling Defendants written notification of the same and describe the noncompliance. The provisions for liability, assessment and payment of the stipulated penalties referenced in this Paragraph shall be the same as provided in Paragraphs 75 through 83 of this Section, except that each reference to EPA shall read as a reference to the VTDEC, each reference to the United States shall be read as a reference to the State, each reference to the State shall be read as a reference to the United States, and each reference to the State's reasonable opportunity to review and comment shall be deleted.

86. a. If Performing Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Performing Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 81.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Performing 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(l) of CERCLA. However, the United States shall not seek civil penalties pursuant to Section

122(l) of CERCLA for any violation for which a stipulated penalty is paid hereunder, except in the case of a willful violation of the Consent Decree.

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

XXI. PLAINTIFFS' COVENANTS NOT TO SUE AS TO PERFORMING SETTLING DEFENDANTS

88. In consideration of the actions that will be performed and the payments that will be made by the Performing Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 89, 90, and 94 of this Section, the United States on behalf of EPA, DOI and NOAA covenants not to sue or to take administrative action against Performing Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. In consideration of the actions that will be performed and the payments that will be made by the Performing Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 89, 90, and 94 of this Section, the State covenants not to sue or to take administrative action against Performing Settling Defendants pursuant to Section 107(a) of CERCLA and 10 Vt.Stat.Ann. Ch. 159, § 6615 and 10 Vt.Stat.Ann. Chapter 201 relating to the Site. Except with respect to future liability, these covenants not to sue by the United States and the State shall take effect upon the effective date of this Consent Decree. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Removal Action by EPA pursuant to Paragraph 52.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Performing Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Performing Settling Defendants and do not extend to any other person.

89. 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 Performing Settling Defendants (a) to perform further response actions relating to the Site or (b) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Removal Action:

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

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

90. 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 Performing Settling Defendants (a) to perform further

response actions relating to the Site or (b) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Removal Action:

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

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

91. State's Pre-Certification Reservations. Notwithstanding any other provisions of this Consent Decree, the State on behalf of the VTDEC, reserves, and this Consent Decree is without prejudice to, any right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to 10 Vt.Stat. Ann., Ch. 159, § 6615, seeking to compel all or any of the Performing Settling Defendants (a) to perform other response actions at the Site, or (b) to reimburse the State for additional response costs for response actions at the Site, to the extent that EPA has determined that such actions required under (a) and (b) above in this Paragraph will not significantly delay or be inconsistent with the Removal Action, if, prior to Certification of Completion of the Removal Action:

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

and the State Agency Commissioner, or his or her delegate determines, pursuant to 10 Vt.Stat. Ann. Ch. 201 or Ch. 211, 18 Vt.Stat. Ann. Ch. 28 or 21 Vt.Stat. Ann. Ch. 23, based on these previously unknown conditions or this information together with any other relevant information that the response actions taken are not protective of public health, safety, welfare or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

92. State's Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State, on behalf of the VTDEC, reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to 10 Vt.Stat. Ann. Ch. 159, § 6615, seeking to compel all or any of the Performing Settling Defendants (a) to perform other response actions at the Site, or (b) to reimburse the State for additional response costs for response actions at the Site, to the extent that EPA has determined that such actions required under (a) and (b) above in this Paragraph will not significantly delay or be inconsistent with the Removal Action, if, subsequent to Certification of Completion of Removal Action:

i. conditions at the Site, previously unknown to the State, are discovered or become known by the State after the Certification of Completion, or

ii. information previously unknown to the State is received by the State, in whole or in part, after the Certification of Completion,

and the VTDEC Commissioner, or his or her delegate, determines, pursuant to 10 Vt.Stat.Ann. Ch. 201 or Ch. 211, 18 Vt.Stat.Ann. Ch. 28 or 21 Vt.Stat.Ann. Ch. 23, based on these previously unknown conditions or this information together with any other relevant information, that the response actions taken are not protective of public health, safety, welfare or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

93. For purposes of Paragraphs 89 and 91, the information and the conditions known to EPA, under Paragraph 89, and/or information and the conditions known to the State, under paragraph 91, shall include only that information and those conditions known to EPA and/or the State, as applicable, as of the date the Action Memorandum was signed, as set forth in the Action Memorandum for the Site and the administrative record supporting the Action Memorandum, and that information and those conditions known to EPA and/or the State as set forth in the Long-Term Monitoring Plan Sampling Report (Spring 1996). For purposes of Paragraphs 90 and 92, the information and conditions known to EPA, under paragraph 90, and/or the conditions known to the State, under paragraph 92, shall include only that information and those conditions known to EPA and/or the State, as applicable, as of the date of Certification of Completion of the Removal Action and set forth in the Action Memorandum, the administrative record supporting the Action Memorandum, the Long-Term Monitoring Plan Sampling Report (Spring 1996), the post-Action Memorandum administrative record, or in any information received by EPA (or the State for the purposes of Paragraph 92) pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Removal Action.

94. 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 88. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Performing Settling Defendants with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Performing Settling Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the Action Memorandum, the Work, or otherwise ordered by EPA;
- d. criminal liability;
- e. liability for violations of federal or state law;

- f. liability, prior to Certification of Completion of the Removal Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans);
- g. previously incurred costs of response related to the RI/FS Order;
- h. liability for any future response action relating to the Active Remediation of the groundwater at the Site including monitoring to the extent it is not included in Monitoring required pursuant to Section VIII of the SOW;
- i. implementation of additional Institutional Controls and/or access as determined by EPA and as part of any response action at the Site; and
- j. claims seeking, or liability for, the securing and implementation of Supplemental Institutional Controls, and liability for any response costs incurred relating to the implementation or securing of Supplemental Institutional Controls.

95. Work Takeover. In the event EPA determines, after a reasonable opportunity for review and comment by the State, that Performing Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA or the State may assume the performance of all or any portions of the Work as EPA determines necessary, after a reasonable opportunity for review and comment by the State. Performing Settling Defendants may invoke the procedures set forth in Paragraph 70 of Section XIX (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States or the State in performing the Work pursuant to this Paragraph shall be paid by Performing Settling Defendants pursuant to Section XVI (Reimbursement of Response Costs). Any and all costs incurred by the EPA and/or the State in performing the Work pursuant to this paragraph shall be reimbursed by Performing Settling Defendants pursuant to the procedures for payment in Section XVI and shall not be subject to the \$750,000 Oversight Cost cap in Section XVI.

96. Reservations Concerning Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States, on behalf of DOI and NOAA, and the State, on behalf of the Agency for Natural Resources, reserve the right to institute proceedings against Performing Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on (a) conditions with respect to the Site, unknown to DOI, NOAA and the State Agency for Natural Resources, as appropriate, at the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources, or (b) information received after the date of lodging of this Consent Decree which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to the United States or the State, as appropriate, at the date of lodging of this Consent Decree.

97. Except with respect to Monitoring, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

98. **Covenant Not to Sue.** Subject to the reservations in Paragraph 99, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, including any department, agency or instrumentality of the United States or the State, with respect to the Site, Past Response Costs, Oversight Costs, Future Response Costs, or response actions as defined herein or this Consent Decree, including but not limited to:

a. 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), 107, 111, 112, 113 or any other provision of law;

b. any claims under CERCLA Sections 107 or 113 related to the Site;

c. any claim under the United States Constitution, the Vermont Constitution, the Tucker Act, 28 U.S.C. § 1491, or at common law, or arising out of or relating to past or future access to, imposition of covenants, conditions and restrictions on, or other restrictions on the use or enjoyment of property owned or controlled by the Settling Defendants affected by the covenants, conditions, and restrictions and access rights herein;

d. any claims arising out of response activities at the Site, including claims based on EPA's and the State's selection of response actions, oversight of response activities or approval of plans for such activities; or

e. any claims for costs, fees, or expenses incurred in this action or related to the Site, including claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended.

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

100. Nothing in this Consent Decree shall be deemed to constitute approval or 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).

101. Except as provided in Subparagraph 113.b, Settling Defendants agree to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against the following persons:

a. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of only Municipal Solid Waste or Sewage Sludge owned by such person, and (iii) who is a Small Business, a Small Non-profit Organization, or the Owner, Operator, or Lessee of Residential Property;

b. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of 55 gallons or less of liquid materials containing hazardous substances, or 100 pounds or less of solid materials containing hazardous substances, except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site; and

c. with respect to claims for contribution only, any other Settling Defendant(s).

XXIII. SETTLEMENT WITH DE MINIMIS DEFENDANTS

102. The Regional Administrator of EPA, Region I, or his delegatee, has determined the following:

a. prompt settlement with each *De Minimis* Defendant is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

b. the payment to be made by each *De Minimis* Defendant under this Consent Decree involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1), based upon EPA's estimate that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by private parties is between \$10 million and \$15 million; and

c. the amount of hazardous substances contributed to the Site by each *De Minimis* Defendant and the toxic or other hazardous effects of the hazardous substance contributed to the Site by each *De Minimis* Defendant are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A). This is because the amount of hazardous substances contributed to the Site by each *De Minimis* Defendant does not exceed 1.05% of the hazardous substances at the Site and the hazardous substances contributed by each *De Minimis* Defendant to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

103. **Certification** By signing this Consent Decree, each *De Minimis* Defendant certifies, individually, that, to the best of its knowledge and belief, it has:

a. conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

The Settling Defendants participated in an allocation process regarding the Site. Certain documents prepared by the Settling Defendants in connection with the allocation process which are privileged have not been disclosed to EPA.

104. Should any *De Minimis* Defendant discover or come to possess after the date of its signature to this Consent Decree, any information, not previously provided to the EPA, the State, or to any Performing Settling Defendant which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site, the *De Minimis* Defendant shall immediately notify EPA, the State and the Performing Settling Defendants of the new information. *De Minimis* Defendants shall not be held liable for stipulated penalties for failure to comply with this paragraph.

105. Notwithstanding any other provision in this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against any individual *De Minimis* Defendant in this action or in a new action or to issue an administrative order to any individual *De Minimis* Defendant seeking to compel that *De Minimis* Defendant to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that such *De Minimis* Defendant contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such *De Minimis* Defendant no longer qualifies as a *de minimis* party at the Site because such party contributed greater than 1.05% of the hazardous substances at the Site, or contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

106. Payments by *De Minimis* Defendants.

a. Within 30 days of receipt of written notice of the entry of this Consent Decree, each *De Minimis* Defendant shall pay to the Performing Parties the amounts set forth in Appendix G.

b. Each *De Minimis* Defendant's payment to the Performing Settling Defendants includes an amount for all past and future response costs incurred or expected to be incurred at the Site by Plaintiffs or any private party, an amount for all natural resource damages assessment and restoration costs and a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the Plaintiffs or by any private party, will exceed the estimated total response costs upon which *De Minimis* Defendants' payments are based.

c. Each payment to the Performing Settling Defendants shall be made by certified or cashier's check made payable to "Bennington Landfill Site Group" and delivered to

common counsel for the Performing Settling Defendants, David P. Rosenblatt, Esquire, Burns & Levinson LLP, 125 Summer Street, Boston, MA 02110. A copy of the transmittal letter and the check simultaneously shall be sent to EPA, and DOJ, and the State in accordance with Paragraph 122. The payments shall be turned over to the custody of the Performing Settling Defendants who shall use the funds to finance the Work. The funds shall not be used to pay stipulated penalties or attorney fees.

107. Plaintiffs' Covenants Not to Sue As to *De Minimis* Defendants.

a. In consideration of the payments that will be made by *De Minimis* Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 108, the United States covenants not to sue or take administrative action against any of the *De Minimis* Defendants pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site.

b. In consideration of the payments that will be made by *De Minimis* Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 108, and except with respect to the State Settling Defendant, the State covenants not to sue or take administrative action against any of the *De Minimis* Defendants pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, or 10 Vt.Stat.Ann. Ch. 159, § 6615 relating to the Site.

c. With respect to present and future liability, the covenants not to sue set forth in Subparagraphs 107.a and 107.b shall take effect for each *De Minimis* Defendant upon receipt of that *De Minimis* Defendant's payments as required by Paragraph 106 of this Consent Decree. With respect to each *De Minimis* Defendant, individually, this covenant not to sue is conditioned upon: (a) the satisfactory performance by the *De Minimis* Defendant of all obligations under this Consent Decree; and (b) the veracity of the information provided to EPA by the *De Minimis* Defendant relating to the *De Minimis* Defendant's involvement with the Site. The covenant not to sue under this Paragraph extends only to the *De Minimis* Defendants and does not extend to any other person.

108. Plaintiffs' Reservations of Rights as to *De Minimis* Defendants. The covenant not to sue by the United States set forth in Paragraph 107 does not pertain to any matters other than those expressly specified in Paragraph 107. The United States reserves, and this Consent Decree is without prejudice to, all rights against *De Minimis* Defendants with respect to all other matters including but not limited to, the following:

- a. claims based on a failure by *De Minimis* Defendants to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- c. liability for future disposal of Waste Material at the Site, other than as provided in the Action Memorandum, the Work, or otherwise ordered by EPA;
- d. criminal liability; and

- e. liability for violations of federal or state law.

109. *De Minimis* Defendants covenant not to sue and agree not to assert any claims or causes of action against any Settling Defendant with regard to the Site pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

110. Contribution Protection as to *De Minimis* Defendants

a. Performing Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against any *De Minimis* Defendant with regard to the Site pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, except as provided in Paragraphs 104 and 105.

b. The Parties agree, and by entering this Consent Decree this Court finds, that each *De Minimis* Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 122(g)(5) of CERCLA, 42 U.S.C. § 9622(g)(5), for "*De Minimis* Matters Addressed" in this Consent Decree. The "*De Minimis* Matters Addressed" in this Consent Decree are (a) all response actions taken and to be taken by the Plaintiffs and by private parties; (b) all Response Costs incurred and to be incurred by the Plaintiffs and by private parties in connection with the Site; and (c) all natural resource damages assessment and restoration costs.

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

111. 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.

112. The Parties agree, and by entering this Consent Decree this Court finds, that the Performing Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. "Matters addressed" shall be the Removal Action, Post-Removal Site Control, Monitoring, Past Response Costs, Oversight Costs, and Future Response Costs.

113. Settling Defendants' Suits or Claims for Contribution.

a. 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 and the State in writing no later than 65 days prior to the initiation of such suit or claim. Such notification shall include a description of the reasons, including references to available evidence, that each person to be named in the suit or claim does not fall within the class of persons, identified in Paragraph 101, against whom the Settling Defendants have waived their claims or causes of action for contribution. EPA may, within 60 days of receipt of such notification, request that Settling Defendants provide supplemental information regarding the notification. EPA may request a 30-day extension to complete its review of Settling Defendants'

notification. If EPA fails to object in writing to Settling Defendants' suit or claim with respect to a person identified in the notification within 60 days of receipt of the notification (or within 90 days if an extension is requested), then Settling Defendants shall not be held liable for stipulated penalties for failure to comply with Paragraph 101 with respect to that person. Notwithstanding the provisions of this paragraph, the United States reserves the right to pursue a judgment from or enter into settlements with any person in connection with the Site, including but not limited to any person who falls within the class of persons, identified in Paragraph 101, against whom the Settling Defendants have waived their claims or causes of action for contribution.

b. The waiver of claims set forth in Paragraph 101 and the notification procedures set forth in Subparagraph 113.a shall not apply to any claims or suits against any party which has previously been sent a notice letter from EPA.

114. 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 and the State within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

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

XXV. ACCESS TO INFORMATION

116. Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site 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 and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

117. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be 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 and the State, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

118. 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

119. Until 6 years after the Performing Settling Defendants' receipt of EPA's notification of Completion of Removal Action pursuant to Paragraph 52.b of Section XIV (Certification of Completion), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 6 years after the Performing Settling Defendants' receipt of EPA's notification pursuant to Paragraph 52.b of Section XIV (Certification of Completion), Performing 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.

120. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to EPA or the State. 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 law. If the Performing 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 subject of the document, record, or information; and (6) the privilege asserted by Performing Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged. Settling Defendants shall retain all documents, records and information claimed as privileged until the United States has had a reasonable opportunity to dispute the privilege claim(s) and any such dispute has been resolved in favor of Settling Defendants.

121. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State

or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 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

122. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, the VTDEC, the *De Minimis* Defendants, and the Performing 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
Washington, D.C. 20044-7611
Re: DJ No. 90-11-3-868A

and Director, Office of Site Remediation and Restoration
United States Environmental Protection Agency
Region I (HIO)
J.F.K. Federal Building
Boston, MA 02203

As to EPA: Edward M. Hathaway
Remedial Program Manager
U.S. Environmental Protection Agency
Office of Site Remediation and Restoration (HBT)
J.F.K. Federal Building
Boston, MA 02203

As to DOI: Mark Barash
Office of the Regional Solicitor
U.S. Department of the Interior
One Gateway Center, Suite 612
Newton Corner, MA 02158-2868

As to the State: Stan Cornelle, State Site Manager
Waste Management Division
Vermont Department of Environmental Conservation
103 South Main Street
Waterbury, VT 05676

As to the Performing
Settling Defendants:

Geoff Seibel
de maximis, Inc.
1125 South Cedar Crest Blvd.
Suite 202, Allentown, PA 18103

and

David P. Rosenblatt, Esquire
Burns & Levinson LLP
125 Summer Street
Boston, MA 02110
Common Counsel to Performing Settling Defendants

As to *De Minimis* Notice to Common Counsel Rosenblatt until three years
Settling Defendants: following the effective date of this Consent Decree after which
notice will be made to each *De Minimis* Defendant as identified in
the signature page of this Consent Decree.

XXVIII. APPENDICES

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

"Appendix A" is the Action Memorandum.

"Appendix B" is the SOW.

"Appendix C" is the NRD SOW.

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

"Appendix E" is the complete list of the *De Minimis* Defendants.

"Appendix F" is the complete list of the Performing Settling Defendants.

"Appendix G" is the list of amounts each *De Minimis* Defendant shall pay to the
Performing Settling Defendants under this Consent Decree.

XXIX. COMMUNITY RELATIONS

124. Performing Settling Defendants shall propose to EPA and the State their participation in the community relations plan to be developed by EPA, after a reasonable opportunity for review and comment by the State. EPA will determine the appropriate role for the Performing Settling Defendants under the Plan. Performing Settling Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Performing 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 or the State to explain activities at or relating to the Site.

XXX. MODIFICATION

125. Material modifications to the SOW may be made only by written notification to and written approval of the United States, Performing Settling Defendants, and the Court. Prior to

providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

126. Modifications to the schedules specified in the Consent Decree for completion of the Work, or modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Performing Settling Defendants. Such non-material modifications will become effective upon filing with the Court.

127. Non-material modifications to the Consent Decree other than those addressed above in Paragraph 126 may be made only by written notification to and written approval of the United States, the State and the Performing Settling Defendants. Such modifications will become effective upon filing with the Court by the United States. Material modifications to the Consent Decree and any modifications to the Performance Standards may be made only by written notification to and written approval of the United States, the State, the Performing Settling Defendants, and the Court, and, if affected by the modification, the *De Minimis* Settling Defendants.

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

129. For purposes of this Section, the Consent Decree shall not include the SOW or other attachments to the Consent Decree.

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

130. This Consent Decree shall be subject to a thirty (30) day public comment period consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent to the Consent Decree if comments received disclose facts or considerations which show that the Consent Decree is inappropriate, improper or inadequate within the meaning of Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2). The State may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates state law. The United States reserves the right to challenge in court the State withdrawal from the Consent Decree, including the right to argue that the requirements of state law have been waived, pre-empted or otherwise rendered inapplicable by federal law. The State reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In addition, in the event of the United States' withdrawal from this Consent Decree, the State reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

131. 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.

XXXII. EFFECTIVE DATE

132. 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.

XXXIII. RETENTION OF JURISDICTION

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

XXXIV. SIGNATORIES/SERVICE

134. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice, and the Attorney General for the State of Vermont 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.

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

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

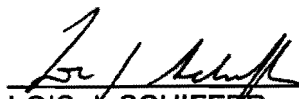
SO ORDERED THIS 18 DAY OF 8, 1997.


United States District Judge


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR THE UNITED STATES OF AMERICA

6/21/97
Date

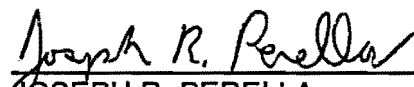

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

6/24/97
Date


MARK A. GALLAGHER
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044-7611
(202) 514-5405

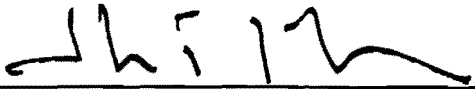
CHARLES R. TETZLAFF
United States Attorney
for the District of Vermont

6/25/97
Date


JOSEPH R. PERELLA
Assistant U.S. Attorney
P.O. Box 570
Burlington, VT 05402-0570
(802) 951-6725

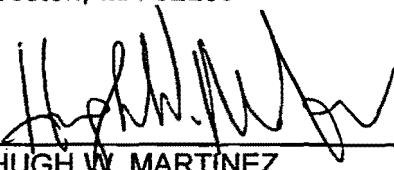
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

4/6/97
Date



JOHN P. DEVILLARS
Regional Administrator, Region I
U.S. Environmental Protection
Agency
J.F.K. Federal Building (RAA)
Boston, MA 02203

5-19-97
Date



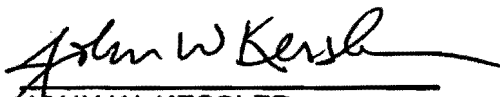
HUGH W. MARTINEZ
Senior Attorney
U.S. Environmental Protection
Agency
Region I
J.F.K. Federal Building (SEL)
Boston, MA 02203

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR THE STATE OF VERMONT
WILLIAM H. SORRELL
ATTORNEY GENERAL

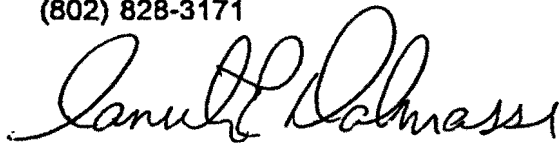
May 22, 1997
Date

by:


JOHN W. KESSLER
Assistant Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609-1001
(802) 828-3171

May 26, 1997
Date

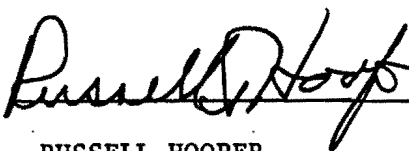
by:


CANUTE E. DALMASSE, Commissioner
Vermont Department of Environmental Conservation
103 South Main Street
Waterbury, VT 05676
(802) 241-3800

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR B CO., ON BEHALF OF
ITSELF AND ON BEHALF OF BIJUR LUBRICATING CORP.

4/14/97
Dated


Name RUSSELL HOOPER

Title PRESIDENT

Address 9700 W. PICO BLVD., LOS ANGELES, 90035

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

Name: R. MARSHALL WITTEN, ESQ.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Eveready Battery Co., Inc., ON BEHALF OF
ITSELF AND ON BEHALF OF _____

4-22-97
Dated

C. J. Parietti
Name C. J. Parietti
Title Vice President - Production
Eveready Battery Co., Inc.
25225 Detroit Road
Address Westlake, Ohio 44145

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

Name: Lisa A. Funderburg, Esq.
Eveready Battery Co., Inc.
Checkerboard Square
St. Louis, Missouri 63164
Phone: (314) 982-2801
Fax: (314) 982-1603

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Johnson Controls Battery Group, Inc., ON BEHALF OF
ITSELF AND ON BEHALF OF _____

4/18/97
Dated

Name

Arthur F. Nennig, Jr.

Title

Controller

Address

Johnson Controls, Inc.
5757 North Green Bay Avenue X-75
Milwaukee, WI 53202

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

Name:

George J. Marek, Esq.

Dennis P. Reis, Esq.

Quarles & Brady, Counsel for Johnson Controls Battery Group, Inc.

411 East Wisconsin Avenue

Milwaukee, WI 53202

Fax: 414/271-3552

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Textron Inc., ON BEHALF OF
ITSELF AND ON BEHALF OF _____

Avco Corporation

4/9/97
Dated

Name John W. Mayers, Jr.

Title Vice President Risk Management and Insurance

Address 40 Westminster Street
Providence, RI 02903

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


Name: Jamieson M. Schiff

Address: 40 Westminster Street
Providence, RI 02903

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR THE TOWN OF BENNINGTON, ON BEHALF OF
ITSELF AND ON BEHALF OF THE
BENNINGTON SELECT BOARD

May 2, 1997
Dated


Name Stuart A. Hurd
Title Town Manager

Address 205 South Street
P.O. Box 469
Bennington, VT 05201

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

Name: Stuart A. Hurd

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Add, Inc., ON BEHALF OF
ITSELF AND ON BEHALF OF _____

April 16, 1987
Dated

Paul E. Kritzer
Name Paul E. Kritzer
Title Secretary
Address c/o Edward B. Witte
Foley & Lardner
777 E. Wisconsin Avenue
Milwaukee, WI 53202

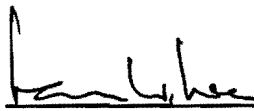
Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR BENNINGTON COLLEGE, ON BEHALF OF
ITSELF AND ON BEHALF OF NO OTHER PARTY

April 15, 1997
Dated


Name W. W. LEE
Title VICE PRESIDENT FOR FINANCE & ADMINISTRATION
Address ROUTE 67A, BENNINGTON, VT 05201

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

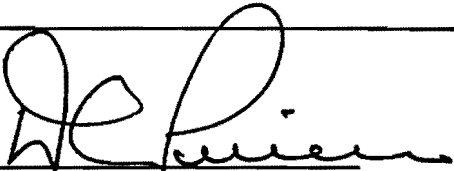
Name: SAME AS ABOVE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

GCDC, Inc. and
Bennington Iron Works, Inc.

FOR _____, ~~ON BEHALF OF~~

~~ITSELF AND ON BEHALF OF~~ _____

By: 

April 16, 1997
Dated

Name Douglas C. Pierson
Title Attorney
Address 253 South Union Street
Burlington, Vermont 05401

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

Name: Douglas C. Pierson

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Chemfab Corporation, ON BEHALF OF
ITSELF AND ON BEHALF OF _____

APRIL 10, 1997

Dated

Charles Tilgner V.P.
Name CHARLES TILGNER III
Title VICE PRESIDENT

Address CHEMFAB CORPORATION
701 DANIEL WEBSTER HIGHWAY
PO BOX 1137
MERRIMACK, NH 03054

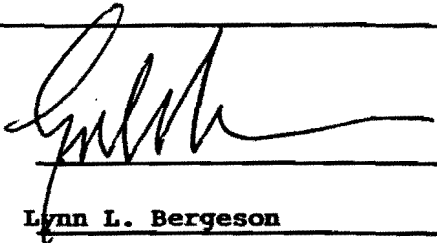
Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: MICHAEL J. QUINN
McLANE, GRAF, RAULERSON & MIDDLETON
15 NORTH MAIN STREET
CONCORD, NH 03301-4945

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

Courtaulds Structural
FOR Composites, Inc., ON BEHALF OF
ITSELF AND ON BEHALF OF _____

4/17/97
Dated


Name Lynn L. Bergeson

Title Counsel

Address Weinberg, Bergeson & Neuman
1300 Eye Street, N.W., Suite 1000 West
Washington, D.C. 20005

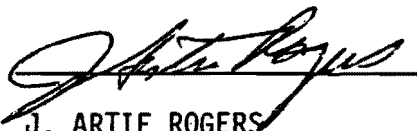
Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: Lynn L. Bergeson

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR CLR CORPORATION, ON BEHALF OF
ITSELF AND ON BEHALF OF SIBLEY MANUFACTURING CO., INC.

4/15/97
Dated


Name J. ARTIE ROGERS
Title VICE PRESIDENT, FINANCE
c/o ROY L. BERNSTEIN, SCHWARTZ & FREEMAN
401 NORTH MICHIGAN AVENUE
SUITE 1900
Address CHICAGO, IL 60611


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

Name: ROY L. BERNSTEIN
SCHWARTZ & FREEMAN
401 NORTH MICHIGAN AVENUE
SUITE 1900
CHICAGO, IL 60611

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR MASCOTECH, INC., ON BEHALF OF
ITSELF AND ON BEHALF OF Schmelzer Corporation
and Saturn Electronics and Engineering, Inc.

April 16, 1997
Dated


Name Timothy Wadhams
Title Vice President/Treasurer
Address 21001 Van Born Road, Taylor, MI 48180

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

Name: Scott A. Halpert
Assistant Corporate Counsel

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Southwestern Vt. Medical Center, ON BEHALF OF
ITSELF AND ON BEHALF OF Henry W. Putnam Memorial
Health Corporation and its' Subsidiaries

April 15, 1997
Dated

Julia G. Bolton
Name Julia G. Bolton
Title Senior Vice President
100 Hospital Drive
Address Bennington, VT 05201

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

Name: Craig Ghidotti

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Central Vermont Public Service Corporation, ON

BEHALF OF ITSELF AND ON BEHALF OF Connecticut

Valley Electric Company, Inc.

Dated

4/14/97

Name


Hans G. Huessy

Title

Associate Corporate Counsel

Address

77 Grove Street, Rutland, VT 05701

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

Name:

Hans G. Huessy, Esq.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

OCEAN VIEW CAPITAL, INC.
(F/K/A, TRIANGLE WIRE & CABLE, INC.)
FOR _____, ON BEHALF OF
ITSELF AND ON BEHALF OF _____

APRIL 22, 1997
Dated

Name SHARAD BHATIA
Title ASSISTANT GENERAL COUNSEL
10 LINCOLN CENTER
Address LINCOLN, RI 02806


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

Name: SHARAD BHATIA

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR H. M. T. COMPANY, INC., ON BEHALF OF
ITSELF AND ON BEHALF OF HENRY M. TUTTLE CO., INC.
(PREDECESSOR OF H. M. T. COMPANY, INC.)

4/6/97
Dated


Name WALTER O. NOYES
Title PRESIDENT

Address 308 ELM ST.
BENNINGTON, VT. 05201

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

Name: WALTER O. NOYES

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR State of Vermont Agency of Transportation

ON BEHALF OF ITSELF

4/14/97
Dated

Name Glenn Gershaneck

Title Secretary of Transportation

Address 133 State Street
Montpelier, Vermont 05633

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

Name: Attorney General
State of Vermont
109 State Street
Montpelier, Vermont 05609

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR Vermont Bag and Film, Inc., ON BEHALF OF
ITSELF AND ON BEHALF OF Vermont Bag and Film, Inc.

5/1/97
Dated

Name James Comi, Jr.
[Signature]
Title PRESIDENT

Address 160 BenMont Ave, Bennington, Vermont

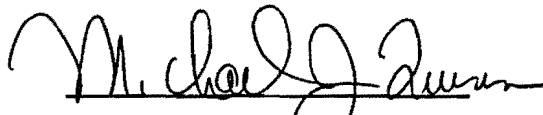
Agent Authorized to Accept Service on Behalf of Above-signed
Party:

Name: [Signature]
James Comi, Jr.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Town of Bennington, et al.*, relating to the Bennington Superfund Site.

FOR U.S. TSUBAKI, INC., ON BEHALF OF
ITSELF AND ON BEHALF OF _____

4/15/97
Dated


Name MICHAEL J. QUINN
Title ATTORNEY
D'ANCONA & PFLAUM
Address 30 N. LASALLE ST. # 2900
CHICAGO, IL 60602

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

Name: MICHAEL J. QUINN

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

AUG 8 3 52 PM '97

CLERK
BY [Signature]
DEPUTY CLERK

UNITED STATES OF AMERICA, and
STATE OF VERMONT,

Plaintiffs

v.

TOWN OF BENNINGTON, *et al.*,

Defendants.

Civ. Nos. 2:97-CV-197 and
2:97-CV-208

**ORDER APPROVING AND ENTERING
CONSENT DECREE AS A FINAL JUDGMENT**

WHEREAS, pending before this Court is a proposed Consent Decree between the United States of America, the State of Vermont and 19 defendants in connection with the Bennington Landfill Superfund Site, in Bennington, Vermont, and

WHEREAS, this Court finds that approval of the proposed Consent Decree will resolve all liability against the 19 defendants on all claims by the United States and the State.

NOW THEREFORE, it is this 8th day of August, 1997, HEREBY

ORDERED that the proposed Consent Decree is approved and entered as a final judgment within the meaning of 28 U.S.C. § 1291.

[Signature]

United States District Judge