

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

United States of America,

Plaintiff,

v.

Green Mountain Power Corporation,
New England Electric System,
Vermont Gas Systems, Inc.,
Southern Union Company,
UGI Utilities, Inc.,
General Electric Company,
Lockheed Martin Corporation,
General Dynamics Armament Systems, Inc.,
Maytag Corporation,
Citizens Properties, Inc.,
City of Burlington, Vermont,
Davis Development Corporation,
Maltex Partnership,
453 Pine Street Associates,
BCV Corporation,
Speciality Filaments, Inc.
UDV North America, Inc. (formerly Heublein, Inc.)
Martin Marietta Corporation,
Vermont Agency of Transportation,
The Uhlmann Company,
Vermont Railway, Inc.

Defendants.

CIVIL ACTION NO. _____

CONSENT DECREE

State of Vermont,

Plaintiff,

v.

Green Mountain Power Corporation;
New England Electric System,
Vermont Gas Systems, Inc.,
Southern Union Company,
UGI Utilities, Inc.,
General Electric Company,
Lockheed Martin Corporation,
General Dynamics Armament Systems, Inc.,
Maytag Corporation,
Citizens Properties, Inc.,
City of Burlington, Vermont,
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453 Pine Street Associates,
BCV Corporation,
Speciality Filaments, Inc.
UDV North America, Inc. (formerly Heublein, Inc.)
- Martin Marietta Corporation,
The Uhlmann Company,
Vermont Railway, Inc.,
United States Department of Commerce, and
United States General Services Administration.

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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") and the United States Department of Interior ("DOI"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred and to be incurred by EPA and the Department of Justice for response actions at the Pine Street Canal Superfund Site in Burlington, Vermont, together with accrued interest; (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (3) damages for injury to, destruction of, or loss of natural resources, and for costs of assessing natural resource damages, together with accrued interest.

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") of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State of Vermont has also filed a complaint in this Court alleging that certain of the defendants and the Settling Federal Agencies are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607 and 10 Vt. Stat. Ann. § 6615.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of Interior and the National Oceanic and Atmospheric Administration on August 13, 1998 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 trustees 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, except as expressly provided herein, do they admit any issue of fact or law, including without limitation, whether there has been a release or threatened release of hazardous substance(s) at or from the Site that constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agencies do not admit any liability arising out of the transaction or occurrences alleged in any claim by the State or any counterclaim asserted by the Settling Defendants.

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 September 8, 1983, 48 Fed. Reg. 40670.

H. Pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, EPA performed an immediate removal action at an area of the Site known as Maltex Pond between approximately March, 1985 and December, 1985. On December 5, 1988, the United States instituted an action entitled United States v. Green Mountain Power Corporation, et al., Civil Action No. 88-307 (D. Vt.), pursuant to Section 107 of CERCLA for the recovery of response costs incurred by EPA in conducting the removal action at Maltex Pond. On December 26, 1990, the United States District Court for the District of Vermont entered a consent decree settling the United States' claims against the defendants in that action, including certain of the Settling Defendants

in this action, for costs incurred by EPA during the Maltex Pond removal action and certain other response costs, as specified in the December 26, 1990 consent decree.

I. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, Remedial Investigations and Feasibility Studies (RI/FSes) have been conducted at the Site pursuant to 40 C.F.R. § 300.430. From 1982 to 1986, the Vermont Agency of Transportation undertook the performance of the RI/FS. In 1987, EPA took over the RI/FS activities at the Site. EPA issued a draft Supplemental Remedial Investigation Report in March 1992, and issued a draft Feasibility Study in September, 1992. On November 11, 1992, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published a proposed plan for remedial action (the "1992 Proposed Plan"). During a public comment period from November 17, 1992 to May 15, 1993, EPA received significant public comment in opposition to the 1992 Proposed Plan, including comments stating the need for further study of the Site. EPA withdrew the 1992 Proposed Plan on June 4, 1993, and later announced that it had determined that further studies were necessary to characterize the Site and evaluate remedial alternatives.

J. In September 1993, EPA and the State joined with the Settling Defendants and other parties interested in the Site, including local citizens' organizations, in establishing the Pine Street Barge Canal Coordinating Council. The Coordinating Council was a stakeholders workgroup which facilitated public participation in the study of the Site, and was governed by organizational protocols to which all its members had agreed in May, 1994. Subject to its protocols, the Coordinating Council made consensus recommendations to EPA for performance of additional RI/FS studies and proposed response actions.

K. On July 22, 1994, EPA, the State of Vermont and certain of the Settling Defendants entered into an Administrative Order on Consent (U.S. EPA Docket No. I-94-1065) for performance of Phase I of an Additional Remedial Investigation, and reimbursement of certain oversight costs and other response costs incurred by EPA and the State of Vermont. On June 30, 1995, EPA, the State of Vermont and certain of the Settling Defendants entered into a second Administrative Order on Consent (U.S. EPA Docket No. I-95-1048) for performance of Phase II of the Additional Remedial Investigation and Additional Feasibility Study and reimbursement of certain oversight costs and other response costs incurred by EPA and the State of Vermont. Under EPA oversight and pursuant to the 1994 Order and the 1995 Order, the PRPs completed the Additional Remedial Investigation ("ARI") Report on July 3, 1997, and an Additional Feasibility Study ("AFS") Report in May 1998.

L. On May 27, 1998, following consideration of the ARI Report and AFS Report, the Coordinating Council made a consensus recommendation to EPA, that EPA should propose for public comment Alternative 3A from the AFS as the preferred alternative remedial action for the Pine Street Site. Consistent with its protocols, the Coordinating Council recognized that EPA has the sole responsibility to select a remedial action under CERCLA, following public comment.

M. On May 29, 1998, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the AFS and of a Proposed Plan for remedial action at the Site (the "1998 Proposed Plan"), in a major local newspaper of general circulation. The Proposed Plan recommended Alternative 3A for the remedial action. EPA provided an opportunity for written and oral comments from the public on the 1998 Proposed Plan. A copy of the transcript of the public meeting held on June 24, 1998 is available to the public as part of the administrative record upon which the Regional Administrator or his delegate has based the selection of the response action.

N. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 29, 1998, to which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

O. 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 and on behalf of the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

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

Q. 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, expedite the restoration of natural resources, and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

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 and the Settling Federal Agencies. Solely for the purposes of construing and enforcing this Consent Decree, modifying this Consent Decree consistent with its terms, and the filing of 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, the Department of Interior, the General Services Administration, and the Department of Commerce), the State of Vermont, 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 Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work or the Projects (as defined below) required by this Consent Decree and to each person representing any Performing Defendant with respect to the Site or the Work or the Projects, and shall condition all contracts entered into hereunder upon performance of the Work or the Projects in conformity with the terms of this Consent Decree. Performing Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work or the Projects required by this Consent Decree. Performing Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work and the Projects 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 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:

"ANR" shall mean the Vermont Agency of Natural Resources and any successor departments or agencies of the State.

"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 XXIX). 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.

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

"DOJ" shall mean the United States Department of Justice.

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

"Federal Trustee" shall mean the Secretary of the Department of Interior.

"Federal Trustee Oversight Costs" shall mean all costs, including direct and indirect costs that DOI incurs in reviewing and modifying plans, reports, and other items in connection with the Projects pursuant to this Consent Decree, verifying the Projects, or otherwise overseeing the Projects, including but not limited to payroll costs, contractor costs, travel costs, and laboratory costs.

"Future Federal Trustee Costs" shall mean all costs, including direct and indirect costs, to be incurred in the future by DOI in developing plans, reports and other items for the Projects under this Consent Decree, or otherwise implementing or enforcing this Consent Decree, but shall not include Federal Trustee Oversight Costs. Future Federal Trustee Costs shall also include Interim Response Costs related to DOI.

"Future Response Costs" shall mean all costs, including direct and indirect costs, that EPA and DOJ incur in connection with the Site in the future, including but not limited to enforcement costs and costs incurred pursuant to Sections VII, IX and XV, and Paragraph 104 of Section XXI of this Consent Decree, but excluding Oversight Response Costs. Future Response Costs shall also include all Interim Response Costs related to EPA and DOJ.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by EPA, DOI and DOJ in connection with the Site from October 1, 1997 through the effective date of this Consent Decree, and not subject to recovery under Administrative Order on Consent No. I-95-1048, or (b) incurred prior to the effective date of this Consent Decree but

paid after that date, and not subject to recovery under Administrative Order on Consent No. I-95-1048.

"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).

"Institutional Controls" shall mean land and/or water use restrictions including but not limited to restrictions in the form of contractual agreements, restrictive easements/covenants that run with the land, and governmental controls.

"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 all damages for injury to, destruction of, or loss of natural resources, as defined in Sections 107(a)(4)(C) and 101(16) of CERCLA, 42 U.S.C. §§ 9607(a)(4)(C) and 9601(16).

"Natural Resource Compensatory Restoration Projects" or "Projects" shall mean all activities that Performing Defendants are required to perform under this Consent Decree and the Natural Resource Compensatory Restoration Project Plan attached as Appendix D (the "NRCRP Plan") to restore, enhance, replace or acquire the equivalent of natural resources at or in connection with the Site.

"Non-Performing Defendants" shall mean the Settling Defendants identified and so designated in Appendix H.

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

"Oversight Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or modifying plans, reports and other items pursuant to this Consent Decree, verifying and reviewing the Work, or otherwise overseeing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs.

"Owner Settling Defendants" shall mean the Settling Defendants identified and so designated in Appendix F.

"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 Federal Trustee Costs" shall mean all past costs paid by the Department of Interior at or in connection with the evaluation of injury to, destruction of, or loss of natural resources at the Site through September 29, 1998, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a), through April 30, 1998.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the EPA or DOJ paid at or in connection with the Site through September 30,

1997, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through April 30, 1998.

"Performance Standards" shall mean the standards described in Section X of the ROD and set forth in Section VII of the SOW.

"Performing Defendants" shall mean the Settling Defendants identified and so designated in Appendix G.

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

"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).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 29, 1998, by the Regional Administrator, EPA Region I, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any approved amendments thereto.

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

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

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

"Settling Defendants" shall mean those Parties identified in Appendices F (Owner Settling Defendants), G (Performing Defendants), and H (Non-Performing Defendants). For purposes of Sections III, XXI, XXII, and XXIII only, Settling Defendants shall include all officers, directors, and employees of these parties, but only to the extent that the obligation or alleged liability of such officer, director or employee is based on its status and in its capacity as officer, director or employee, and not to the extent that the obligation or alleged liability arose independently of the liability of the Settling Defendants.

"Settling Federal Agencies" shall mean the General Services Administration and the Department of Commerce.

"Site" shall mean the Pine Street Canal Superfund Site, encompassing approximately 38 acres, located at Pine Street in Burlington, Chittenden County, Vermont and depicted generally on the map attached as Appendix B.

"State" shall mean the State of Vermont.

"State Future Response Costs" shall mean all response costs, including direct and indirect costs, that the State incurs in connection with the Site in the future, including but not limited to enforcement costs and costs incurred pursuant to Sections IX and XV, and Paragraph 104 of Section XXI, but excluding State Oversight Response Costs and State Trustee Oversight Costs.

"State Oversight Costs" shall mean all response costs, including, but not limited to, direct and indirect costs, that the State of Vermont incurs in reviewing plans, reports and other items pursuant to this Consent Decree, verifying and reviewing the Work, or otherwise overseeing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs and laboratory costs.

"State Trustee Oversight Costs" shall mean all response costs, including direct and indirect costs that the State Trustee incurs in reviewing and modifying plans, reports, and other items in connection with the Projects pursuant to this Consent Decree, verifying the Projects, or otherwise overseeing the Projects, including but not limited to payroll costs, contractor costs, travel costs, and laboratory costs.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, Long Term Monitoring, and Operation and Maintenance at the Site, as set forth in Appendix C 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 Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"Trustees" shall mean DOI and the Vermont Agency of Natural Resources.

"United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

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

"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); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under 10 Vt. Stat. Ann. § 6602(16).

"Work" shall mean all activities the Performing Defendants are required to perform under this Consent Decree, except the Natural Resource Compensatory Restoration Projects, and the requirements of Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by and on behalf of the Settling Defendants, to resolve claims for injury to natural resources incurred at the Site, to reimburse certain response costs of the Plaintiffs, to resolve certain other claims of Plaintiffs against Settling Defendants, and to resolve certain claims of the State and Settling Defendants which have been or could have been asserted against the United States, as provided in this Consent Decree.

6. Commitments by Settling Defendants and the Settling Federal Agencies.

a. Performing Defendants shall finance and perform the Work and the Projects in accordance with this Consent Decree, the ROD, the SOW, the NRCRP SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Performing Defendants and approved by EPA or the Trustees pursuant to this Consent Decree. Performing Defendants shall also reimburse the United States for Oversight Response Costs, Future Response Costs, and Future Federal Trustee Costs as provided in this Consent Decree. Performing Defendants shall also reimburse the State for State Oversight

Costs, State Future Response Costs, and State Trustee Oversight Costs, as provided in this Consent Decree.

b. The obligations of the Performing Defendants to finance and perform the Work and the Projects, and to pay amounts owed the United States and the State under this Consent Decree are joint and several. However, Green Mountain Power Corporation ("GMP") shall have primary responsibility for satisfying all such obligations. Failure of GMP to perform the Work and the Projects in accordance with this Consent Decree shall constitute a violation of this Consent Decree and shall be grounds for the imposition of stipulated penalties and liquidated damages against GMP notwithstanding performance by the United States or any other person. In the event of the insolvency or other failure of GMP or any of the other Performing Defendants to implement the requirements of this Consent Decree, the remaining Performing Defendants shall complete all such requirements.

c. In the manner set forth in this Consent Decree, Settling Defendants shall, jointly and severally, reimburse the United States for Past Response Costs. Performing Defendants and Owner Settling Defendants shall jointly and severally reimburse the United States for Past Federal Trustee Costs, and Federal Trustee Oversight Costs, as provided in this Consent Decree.

d. Owner Settling Defendants shall also provide access and comply with institutional controls as provided in this Consent Decree. Nothing in this Consent Decree, however, shall be interpreted or construed as a commitment or requirement that the Vermont Agency of Transportation obligate or pay funds in contravention of Chapter II, Section 27 of the Vermont Constitution or any other applicable provision of the Vermont Constitution or other law of Vermont.

e. Non-Performing Defendants have entered into settlement agreements with the Performing Defendants, pursuant to which they have paid and will pay good and valuable consideration. Except for the requirements of Paragraph 63.a., Section XXIV (Access to Information) and Section XXV (Retention of Records), Non-Performing Defendants shall have no Work or payment obligations under this Consent Decree; provided, however, that if a Non-Performing Defendant becomes an owner of a portion of the Site, it shall have the obligations of an Owner Settling Defendant.

f. The Settling Federal Agencies shall make a payment as provided in this Consent Decree.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD 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 or the Projects 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 or the Projects). Where any portion of the Work or the Projects that is not on-Site requires a federal or state permit or approval, the Performing Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Performing 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 or the Projects resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work or Projects, but only if the Performing Defendants submitted a timely and complete application for such permit, or received an extension or waiver of the deadline based on a Force Majeure event.

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 to Successors-in-Title.

a. With respect to any property owned or controlled by the Owner Settling Defendant(s) at the Site, the Owner Settling Defendant(s) shall, at least 30 days prior to the conveyance of any leasehold interests, give the lessee written notice of: (i) this Consent Decree; (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls); and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls).

b. With respect to the conveyance of any interest in such property other than leasehold interests (including but not limited to fee interests and mortgage interests), the Owner Settling Defendants conveying the interest shall, at least 30 days prior to such conveyance: (i) give the grantee written notice of this Consent Decree; and (ii) 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, access easements, and/or restrictive easements was given to the grantee. No such notice to EPA and the State shall be required for conveyance of a leasehold interest.

c. In the event that the Owner Settling Defendant(s) transfers or conveys the fee title of any property at the Site owned or controlled by the Owner Settling Defendant(s), the Owner Settling Defendant(s) and their successor transferors shall require the transferee to be bound by the terms of this Consent Decree, including Paragraph 9 and Section IX, as a condition of any transfer of fee title of such property. In addition, the transferring Owner Settling Defendant(s) shall, if requested, provide reasonable assistance to EPA or the State, including if necessary the filing of an action to enforce the terms of the transfer, to assure that the transferees comply with the terms of this Consent Decree. If the conditions of this subparagraph are satisfied, then the transferee of such fee title shall be deemed to be the successor to said Owner Settling Defendant(s) for purposes of this Consent Decree, and as provided by Paragraph 2 herein, shall be bound by the terms of this Consent Decree, including without limitation the provisions of Paragraph 9 and Section IX herein. The transferring Owner Settling Defendant(s) shall comply with all provisions of this Consent Decree, other than the post-conveyance compliance with Paragraph 9, which shall become the responsibility of the successor Owner Settling Defendant upon conveyance or transfer of the fee title and the conditions of this subparagraph are met. If the conditions of this subparagraph are satisfied, then the successor Owner Settling Defendant shall have the primary responsibility for compliance with Section IX of this Consent Decree.

VI. PERFORMANCE OF THE WORK AND THE PROJECTS BY PERFORMING DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Performing Defendants pursuant to Sections VI (Performance of the Work and the Projects by Performing 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 of which shall be subject to disapproval by EPA, after a reasonable opportunity for review and comment by the State. Within 10 days after receipt of notice of the lodging of this Consent Decree, Performing Defendants shall notify EPA and the State in writing of a list of the names, titles, and qualifications of not more than four (4) contractors proposed as candidates to be the Supervising Contractor. EPA will provide written notice of the names of any contractor(s) that it disapproves, and an authorization to proceed with respect to any of the other contractors. The Performing Defendants may select a contractor from that list that is not disapproved and shall notify EPA and the State of the name of the Supervising Contractor selected within twenty-one (21) days of EPA's authorization to proceed. If EPA disapproves of all of the contractors on the list, Performing Defendants shall within 21 days provide to EPA and the State a new list of contractors who are proposed, with the information required above. EPA will provide written notice of its decision with respect to the new list in the manner described above.

b. If at any time thereafter, Performing Defendants propose to change a Supervising Contractor, Performing Defendants shall give such notice to EPA, the State and the other Settling Defendants, and must obtain an authorization to proceed from EPA pursuant to this paragraph, 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.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Performing Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Performing Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Design. Performing Defendants shall submit to EPA and the State the Remedial Design Workplan(s) in the manner required and subject to the schedule set forth in the Statement of Work attached in Appendix C hereto. Upon their approval by EPA, after a reasonable opportunity for review and comment by the State, the Remedial Design Workplan(s) and schedules established therein shall be incorporated into and shall become enforceable under this Consent Decree. The Performing Defendants shall commence and shall complete the Remedial Design phases of the Work in the manner provided and in accordance with the schedules established in the approved Workplan(s).

12. Remedial Action. In accordance with the Statement of Work set forth in Appendix C, and in accordance with the schedule established therein, the Performing Defendants shall complete the final Remedial Action Work Plan, which shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, after a reasonable opportunity for review and comment by the State, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. The Performing Defendants shall commence and

complete the Remedial Action phase of the Work in the manner provided and in accordance with the schedules established in the approved Workplan.

13. Compliance Monitoring. Performing Defendants shall develop a Compliance Monitoring Work Plan and Project Operations Plan consistent with the SOW set forth as Appendix C hereto, and shall submit them to EPA for review and approval, after reasonable opportunity for review and comment by the State. Site compliance monitoring shall be conducted during all phases of Remedial Design and Remedial Action, including pre-construction, to establish baseline, construction, and operation and maintenance conditions to ensure that the performance standards described in the ROD and set forth in the SOW are met. Upon their approval by EPA, after a reasonable opportunity for review and comment by the State, the Compliance Monitoring Work Plan and Project Operations Plan and schedules established therein shall be incorporated into and shall become enforceable under this Consent Decree. The Performing Defendants shall commence and shall complete the compliance monitoring phase of the Work in the manner provided and in accordance with the schedules established in the approved Workplans.

14. The Performing Defendants shall continue to implement the Remedial Action, Long Term Monitoring and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

15. Modification of the SOW or Related Work Plans.

a. If EPA, after a reasonable opportunity for review and comment by the State, 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 remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD; and provided further, that EPA shall not require modification to the Work and/or such workplans under this paragraph, if the Performing Defendants demonstrate to EPA that such modification to the Work would not be needed but for: (i) discharges of stormwater entering the Site; (ii) a discharge authorized by a permit issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342; (iii) discharges of substances subject to the exclusion for petroleum set forth in 42 U.S.C. § 9601(14); or (iv) any combination thereof.

b. If Performing Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 77 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

c. Performing 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.

d. Nothing in this Paragraph shall be construed to limit EPA's or the State's authority to require performance of further response actions as otherwise provided in this Consent Decree.

16. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the Work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

17. Performing Defendants shall, prior to any off-Site shipment of hazardous materials, hazardous wastes or hazardous substances from the Site to an out-of-state waste management facility, provide written notification of such shipment to the appropriate state environmental official in the receiving facility's state, the EPA Project Coordinator, and the State Project Coordinator. 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 Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the hazardous materials, hazardous wastes or hazardous substances are to be shipped; (2) the type and quantity of the material to be shipped; (3) the expected schedule for the shipment of the material; and (4) the method of transportation. The Performing 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 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 Defendants following the award of the contract for Remedial Action construction. The Performing Defendants shall provide the information required by Paragraph 17.a. as soon as practicable after the award of the contract and before the material is actually shipped.

PERFORMANCE OF THE NATURAL RESOURCE COMPENSATORY RESTORATION PROJECTS

18. In consideration of the covenants set forth in Paragraph 94, the Performing Defendants shall implement Natural Resource Compensatory Restoration Projects to create 8.75 acres of wetlands habitat or achieve its equivalent in restoration and/or enhancements to existing or former degraded wetlands in accordance with the requirements of this Paragraph and the NRCRP Plan. It is the Parties' expectation that the Projects will be implemented at a certain parcel of real property known as the Howe Farm and the adjacent Waterfowl Management Area. The Performing Defendants shall ensure that all wetland habitat created, restored and/or enhanced pursuant to this Consent Decree will be protected in perpetuity through deed restrictions, conservation easements, or similar restrictive instruments.

19. If on or before November 1, 1999 the Performing Defendants are unable to demonstrate to the satisfaction of the Federal and State Trustees that they have agreement with the owner of the Howe Farm to perform the Projects, then the Performing Defendants shall initiate development of such Natural Resource Compensatory Restoration Projects at alternative sites approved by the Federal and State Trustees. In such case, the Performing Defendants shall submit a list of potential alternative sites for Projects to the Trustees, for their approval, by November 15, 1999. If the Federal and State Trustees do not approve an alternative site from the list submitted by the Performing Defendants, they shall so notify the Performing Defendants. Within 15 days of such notice, the Performing Defendants shall make a payment to the Federal and State Trustees in the amount of \$593,655, in accordance with instructions to be provided by the Federal and State Trustees.

20. All aspects of the Projects to be performed by the Performing Defendants shall be under the direction and supervision of a Supervising Contractor. The Performing Defendants have selected The Johnson Company as the Supervising Contractor for the Projects, and the Trustees have not objected to that selection. If at any time prior to completion of the Projects the Performing Defendants propose to change the Supervising Contractor, Performing Defendants shall give prior notice to the Federal and State Trustees and must obtain approval and an authorization to proceed from the Federal Trustee, after reasonable

opportunity for review and comment by the State Trustee, before the new Supervising Contractor performs, directs or supervises any work on the Projects.

21. a. Within 30 days of lodging of this Consent Decree, or within 30 days of the date that an alternative site is approved by the Federal and State Trustees in accordance with Paragraph 19, Performing Defendants shall submit to the Federal and State Trustees for approval a Project Work Plan which shall include specific plans for design and implementation of the Projects and a schedule for completion of the Projects. Performing Defendants shall implement the Projects in accordance with the requirements of the approved Project Work Plan.

b. The Federal and State Trustees shall approve, modify or disapprove any plans, reports or other item required to be submitted to the Federal and State Trustees for approval pursuant to this Consent Decree in the manner set forth in Section XI (EPA Approval of Plans) except that references to EPA or EPA, after reasonable opportunity for review and comment by the State, shall be read as a reference to Federal and State Trustees and references to Work shall be read as references to Natural Resource Compensatory Restoration Projects.

22. Beginning in the second full month following lodging of this Consent Decree, Performing Defendants shall submit to each of the Federal and State Trustees one copy of written monthly progress reports that: (a) describe the actions which have been taken toward implementing the Projects during the previous month; (b) include a summary of all results of sampling and other data received or generated by Performing Defendants or their contractors or agents regarding the Projects in the previous month; (c) identify all deliverables required by the Consent Decree completed and submitted during the previous month; and (d) describe all actions scheduled for the next six weeks in connection with implementation of the Projects.

23. All documents and reports submitted to the Federal and State Trustees (other than monthly progress reports) which purport to document Performing Defendants' compliance with the terms of the Consent Decree shall be signed by an authorized representative of the Performing Defendants.

24. Within sixty (60) days after Performing Defendants conclude that the Natural Resource Compensatory Restoration Projects have been fully performed in compliance with this Consent Decree and the NRCRP Plan and any related workplans, Performing Defendants shall schedule and conduct an inspection to be attended by Performing Defendants and the Federal and State Trustees. If after the inspection, the Performing Defendants believe that the Natural Resource Compensatory Restoration Projects have been fully performed in compliance with this Consent Decree and the NRCRP Plan and related workplans, within thirty (30) days they shall submit a completion report describing the completed Projects and seeking certification of completion to the Federal and State Trustees. In the report the Performing Defendants shall state that the Projects have been completed in full satisfaction of the requirements of this Consent Decree. If after completion of the inspection and receipt and review of the written report the Federal and State Trustees determine that the Projects have not been completed in accordance with this Consent Decree, the Federal and State Trustees will notify the Performing Defendants in writing of any activities that must be performed to achieve compliance. Performing Defendants shall perform all activities described in the notice subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). If after completion of the inspection and receipt and review of the written report the Federal and State Trustees determine that the Projects have been completed in accordance with this Consent Decree, the Federal and State Trustees will so certify in writing to the Performing Defendants.

VII. REMEDY REVIEW

25. Periodic Review. Performing 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 Remedial Action is protective of human health and the environment as required by Section 121(c) of CERCLA and any applicable regulations.

26. EPA Selection of Further Response Actions. If EPA, after a reasonable opportunity for review and comment by the State, determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

27. Opportunity To Comment. 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 the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

28. Performing Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Performing Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 95 or Paragraph 96 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Performing Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute: (1) EPA's determination that the reopener conditions of Paragraph 95 or Paragraph 96 of Section XXI (Covenants by Plaintiffs) are satisfied; (2) EPA's determination that the Remedial Action is not protective of human health or the environment; or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 77 (record review).

29. Submissions of Plans. If Performing Defendants are required to perform the further response actions pursuant to Paragraph 28, they shall submit a plan for such work to EPA for approval, after reasonable opportunity for review and comment by the State, in accordance with the procedures set forth in Section VI (Performance of the Work and the Projects by Performing Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

30. Performing 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 Operations," (EPA QA/R5); "Draft Final Region I, EPA-New England Compendium of Quality Assurance Project Plan Guidance," September 1998; and subsequent amendments to such guidelines, upon notification by EPA to Performing Defendants of such amendment. Amended guidelines shall apply only to activities and procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Performing Defendants shall submit to EPA for approval, 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 applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP and other terms of this Consent Decree shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Defendants shall ensure that EPA and State personnel and their authorized representatives are

allowed access at reasonable times to all laboratories utilized by Performing Defendants in implementing this Consent Decree. In addition, Performing Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA or the State pursuant to the QAPP for quality assurance monitoring. Performing Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Contract Laboratory Program Statement of Work for Organics Analysis, Multi-media, Multi-concentration," (OLMO3.2); "UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Contract Laboratory Program Statement of Work for Inorganics Analysis, Multi-media, Multi-concentration," (ILMO4.0); and "UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Contract Laboratory Program Statement of Work for Organics Analysis, Low Concentration Water," (OLCO2.1), and any amendments made thereto during the course of the implementation of this Decree. Performing 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 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.

31. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA, the State, their authorized representatives, and by any Owner Settling Defendant on whose property the sample is taken. Performing Defendants shall notify EPA and the State not less than twenty-one (21) 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 Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Performing Defendants' implementation of the Work. Upon request, EPA and the State shall provide the final results of analyses of such split or duplicate samples to Performing Defendants and to any Owner Settling Defendant on whose property the sample was taken.

32. Performing Defendants shall submit ten (10) copies to EPA and three (3) copies to the State of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA or the State agrees otherwise. Upon request, the Performing Defendants shall submit a copy of the results of such sampling and/or tests to the Trustees.

33. 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

34. At any property at the Site owned or controlled by any of the Settling Defendants, and at other properties where EPA or the Federal Trustee has determined or may in the future determine that access and/or water use or land use restrictions are needed to implement this Consent Decree (including those properties identified on the tax assessors' map of the City of Burlington as 53-0-7-0, 52-0-1-0, 52-0-4-0, 52-0-5-0, 52-0-6-0, 52-0-8-0, 52-0-9-0, 52-0-10-0, 56-0-6-0, 56-0-7-0, and 56-0-9-0 attached as Appendix I hereto), the Settling Defendants who own or control such property shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work or the Projects;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Implementing the Work pursuant to the conditions set forth in Paragraph 104 of this Consent Decree;
- (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);
- (8) Assessing Settling Defendants' compliance with this Consent Decree; and
- (9) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using property at the Site and the other property identified above, or such other property that may be identified pursuant to this paragraph, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures or of the Projects to be implemented pursuant to this Consent Decree. Such restrictions shall include the following:

- (i) The owner of the property shall be responsible for complying with all federal, state and local laws and regulations regarding the handling and disposal of hazardous substances, pollutants or contaminants;
- (ii) The owner of the property shall not use the property or allow the property to be used so as to unreasonably interfere with any investigations of the environmental conditions at the Site;
- (iii) The owner of the property shall not cause or allow recontamination of the Site following completion of the Remedial Action to such an extent that the Remedial Action or its performance standards may be jeopardized;
- (iv) The owner of the property shall not use the property or allow the property to be used for residential use or for day care centers for the care of children,
- (v) The owner of the property shall not use or allow the use of the groundwater on the property for potable drinking water purposes and shall not install or allow installation of wells at any location where free phase contamination has been shown to be present;

(vi) The owner of the property shall not perform or allow to be performed on the Property any construction activities which will change hydrogeologic conditions and which will likely cause migration of contaminated groundwater to Lake Champlain to such an extent that the Remedial Action may be jeopardized or that a significant risk to Lake Champlain may result;

(vii) The owner of the property shall not perform or allow to be performed excavations to depths greater than five feet (including such excavations which extend below the water table) on the property unless one or more of the following exceptions apply: (1) the excavation is performed to install, repair, maintain, service or remove underground utility components, conduits, installations or channels, which may presently be in place deeper than five feet and which may be below the water table; (2) the excavation consists of drilling, driving or boring to install pilings for otherwise allowable construction; or (3) the excavation is performed in a location on the property in which current contaminant concentrations at depths greater than five feet are below 140 mg/kg total polycyclic aromatic hydrocarbons ("PAH"). In the case of exceptions (1) and (2), the owner of the property shall require workers conducting the excavations and working in the area to use appropriate personal protective equipment as required by the Occupational Health and Safety Administration ("OSHA") or its successor agencies, unless a site specific risk assessment is performed and its results have been approved by EPA prior to the excavation;

(vii) For property at which any of the Projects have been implemented, the owner of the property shall not use the property or allow the property to be used so as to interfere with or adversely affect the Projects; and

c. execute and record in the City Clerk's Office for the City of Burlington, Chittenden County, State of Vermont, easements running with the land that: (i) grant a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 34.a of this Consent Decree, and (ii) grant the right to enforce the land use and water use restrictions listed in Paragraph 34.b of this Consent Decree, or other restrictions that EPA (in connection with the Work) or the Federal Trustee (in connection with the Projects) determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land use and water use restrictions to one or more of the following persons, as determined by EPA (or, as appropriate, the Federal Trustee) after a reasonable opportunity for review and comment by the State: (i) the United States and its representatives, (ii) the State and its representatives, and/or (iii) the Performing Defendants and their representatives. With respect to such property, Settling Defendants shall, within 45 days of entry of this Consent Decree or such later date as EPA or the Federal Trustee identifies such property, submit to EPA (or, as appropriate, the Federal Trustee) for review and approval after a reasonable opportunity for review and comment by the State:

(1) A draft easement, in substantially the form attached hereto as Appendix I that is 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

(2) 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 (or, as appropriate, the Federal Trustee's approval) and acceptance of the easement, such 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, record the easement with the Registry of Deeds or other appropriate land records office of the City of Burlington, Chittenden County. Within 21 days of receipt of evidence that the easement has been recorded, such Settling Defendants shall provide EPA and the State with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps. Settling Defendants shall make all reasonable efforts to encourage prompt recording of the easements by the appropriate land records office.

35. If the Site, or any other property where access and/or land use or water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Performing Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Performing Defendants, as well as for the United States 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 Paragraph 34.a of this Consent Decree;

b. an agreement, enforceable by the Performing Defendants, the United States and the State, to abide by the obligations and restrictions established by Paragraph 34.b of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures and the Projects to be performed pursuant to this Consent Decree; and

c. the execution and recordation in the City Clerk's Office for the City of Burlington, Chittenden County, State of Vermont, or other appropriate land registry office, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 34.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 34.b of this Consent Decree, or other restrictions that EPA in connection with the Work) or the Federal Trustee (in connection with the Projects) determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures or the Projects to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land use or water use restrictions shall be granted to one or more of the following persons, as determined by EPA (or, as appropriate, the Federal Trustee) after a reasonable opportunity for review and comment by the State: (i) the United States and its representatives, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of entry of this Consent Decree or such later date as EPA or the Federal Trustee identifies such property, Settling Defendants shall submit to EPA (or, as appropriate, the Federal Trustee) for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix I, that is 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

(2) 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 (or, as appropriate, the Federal Trustee's) approval and acceptance of the easement, Performing 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, the easement shall be recorded with the appropriate land registry office. Within 21 days of receipt of evidence that the easement has been recorded, Performing Defendants shall provide EPA and the State with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps. Settling Defendants shall make all reasonable efforts to encourage prompt recording of the easements by the appropriate land records office.

36. For purposes of Paragraph 35 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. However, with respect to parties whom EPA has notified as "potentially responsible parties" under Section 107(a) of CERCLA, "best efforts" does not include payments in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. If any access or land use or water use restriction agreements required by Paragraphs 34.a or 34.b of this Consent Decree are not obtained within 90 days of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 34.c of this Consent Decree are not submitted to EPA (or, as appropriate, the Federal Trustee) in draft form within 90 days of the date of entry of this Consent Decree or such later date as EPA or the Federal Trustee identifies such property, Performing Defendants shall promptly notify the United States and the State in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 35 of this Consent Decree. The United States and the State may, as they deem appropriate, assist Settling Defendants in obtaining access or land use or water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Performing Defendants shall reimburse the United States and the State in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States and the State in obtaining such access and/or land use or water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation. Such costs shall be considered Future Response Costs, State Future Response Costs or Future Federal Trustee Costs.

37. If EPA determines, after a reasonable opportunity for review and comment by the State, that land use or water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

38. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

39. In addition to any other requirement of this Consent Decree, on or before the fifteenth day of every calendar month beginning with the first month following lodging of this Consent Decree, the Performing Defendants (either directly or through their Project Coordinator) shall, until Certification of Completion of Remedial Action pursuant to paragraph 59.b, submit two (2) copies to EPA and three (3) copies to the State 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 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 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. Beginning with fifteen days of the receipt of EPA's Certification of Completion of Remedial Action pursuant to Paragraph 59.b, Performing Defendants shall submit these progress reports to EPA and the State on or before the fifteenth day of every third month until EPA notifies the Performing Defendants pursuant to Paragraph 60.b of Section XIV (Certification of Completion), unless EPA or the State requests monthly reports, in which case Performing Defendants shall supply them on a monthly basis. If requested by EPA or the State, Performing Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work.

40. The Performing Defendants shall notify EPA and the State of any change in the schedule described in the monthly or quarterly progress report 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.

41. Upon the occurrence of any event during performance of the Work that Performing 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), Performing 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 Performing Defendants shall within the same time period orally notify the VTDEC Project Coordinator, or if the VTDEC Project Coordinator is unavailable, the Emergency Response Program at (802) 244-8721. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

42. Within 20 days of the onset of such an event, Performing Defendants shall furnish to Plaintiffs a written report, signed by the Performing 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 Defendants shall submit a report setting forth all actions taken in response thereto.

43. Performing Defendants shall submit seven (7) copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Performing Defendants shall simultaneously submit three (3) copies of all such plans, reports and data to the State.

44. Except as provided in Section XIV (Certification of Completion), all reports and other documents submitted by Performing Defendants to EPA and the State (other than the monthly progress reports referred to above) which purport to document Performing Defendants'

compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Performing Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

45. 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 Defendants, or if applicable, an Owner Settling Defendant, modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Performing Defendants, or if applicable, an Owner Settling Defendant, at least one notice of deficiency and an opportunity to cure within ten (10) 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.

46. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 45(a), (b), or (c), Performing Defendants, or if applicable, an Owner Settling Defendant, 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 45(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

47. a. Upon receipt of a notice of disapproval pursuant to Paragraph 45(d), Performing Defendants, or if applicable an Owner Settling Defendant, shall, within ten (10) days or such longer time as specified by EPA in such notice, 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, shall accrue during the ten-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 48 and 49.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 45(d), Performing Defendants, or if applicable an Owner Settling Defendant, 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 Defendants, or if applicable an Owner Settling Defendant, of any liability for stipulated penalties under Section XX (Stipulated Penalties).

48. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Performing Defendants, or if applicable an Owner Settling Defendant, 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 pursuant to the preceding Paragraphs. Performing Defendants, or if applicable an Owner Settling Defendant, 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).

49. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Performing Defendants, or if applicable an Owner Settling Defendant, shall be deemed to have failed to submit such plan, report, or item timely and adequately unless they 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.

50. All plans, reports, and other items required to be submitted to EPA and the State 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 and the State under this Consent Decree, and subject to the provisions of Section XIX (Dispute Resolution), the approved or modified portion shall be enforceable under this Consent Decree.

51. For any plan, report, or other item which is required to be submitted for approval by the Trustees pursuant to this Consent Decree, the provisions of Paragraphs 45-50 shall apply, except that each reference to EPA shall be read as a reference to the DOI.

XII. PROJECT COORDINATORS

52. Within ten (10) days of receipt of notice of lodging this Consent Decree, Performing Defendants, the State, the Trustees 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 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 Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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

54. EPA's Project Coordinator, the State Project Coordinator and the Performing Defendants' Project Coordinator will meet, at a minimum, on a monthly basis, unless otherwise directed by the EPA Project Coordinator until EPA certifies the Completion of Remedial Action pursuant to Paragraph 59.b. Thereafter, they will meet, at a minimum, on an annual basis, unless otherwise directed by the EPA Project Coordinator.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

55. Within 30 days of entry of this Consent Decree, Performing Defendants shall establish and maintain financial security in the amount of \$4,300,000 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 equaling 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 Defendants; or
- e. A demonstration that one or more of the Performing Defendants satisfy the requirements of 40 C.F.R. § 264.143(f).

56. If the Performing Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 55.d of this Consent Decree, Performing Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Performing Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 55.d or 55.e, they shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Performing Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval, after a reasonable opportunity for review and comment by the State, one of the other forms of financial assurance listed in Paragraph 55 of this Consent Decree. Performing Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

57. If Performing Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 55 above after entry of this Consent Decree, Performing Defendants may, on any anniversary date of entry of this Consent Decree, seek to reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Performing Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA, after reasonable opportunity for review and comment by the State. In the event of a dispute, Performing Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

58. Performing 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 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

59. Completion of the Remedial Action.

a. Within 90 days after Performing Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Defendants, EPA and the State. Performing Defendants shall also invite the Trustees to attend the pre-certification inspection. If, after the pre-certification inspection, the Performing Defendants believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, after a reasonable opportunity for review and comment by the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. A copy of the report shall be submitted to the Trustees at the same time as EPA. In the report, a registered professional engineer and the Performing Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Performing Defendant or the Performing Defendants' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Performing Defendants in writing of the activities that must be undertaken by Performing Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing 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 a pre-certification inspection and the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

60. Completion of the Work.

a. Within 90 days after Performing Defendants conclude that all phases of the Work (including O & M), have been fully performed, Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Defendants, EPA and the State. If, after the pre-certification inspection, the Performing Defendants believe that the Work has been fully performed, Performing Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Performing Defendant or the Performing 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 Defendants in writing of the activities that must be undertaken by Performing Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the remedy selected in the ROD. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing 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 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 Settling Defendants in writing.

XV. EMERGENCY RESPONSE

61. 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:

a. If such event occurs as a result of the performance of the Work, Performing Defendants shall, subject to Paragraph 62, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Performing Defendants shall notify the EPA Emergency Response Unit, Region I. Performing Defendants shall also immediately notify the State's Project Coordinator, or if he or she is unavailable, the Emergency Response Program at (802) 244-8721. Performing Defendants shall take such actions in consultation with EPA's and the State's Project Coordinators or other available authorized EPA and State

officers, 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 Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State, take such action instead, Performing Defendants shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs). Such costs shall be Future Response Costs or State Future Response Costs and shall not be subject to any limitations on Oversight Costs set forth at Paragraph 64.

b. If such event is not a result of the performance of the Work, any Owner Settling Defendant on whose property the release or threat of release occurs or from whose property the release or threat of release arises shall, subject to Paragraph 62, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Owner Settling Defendant(s) shall notify the EPA Emergency Response Unit, Region I. Such Owner Settling Defendant shall also immediately notify the State's Project Coordinator, or if he or she is unavailable, the Emergency Response Program at (802) 244-8721. Such Owner Settling Defendant(s) shall take such actions in consultation with EPA's and the State's Project Coordinators or other available authorized EPA and State officers, and in accordance with all applicable provisions of law. In the event that such Owner Settling Defendant(s) fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State, take such action instead, such Owner Settling Defendant(s) shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP in the manner provided by Section XVI (Reimbursement of Response Costs). Such costs shall not be subject to the limitations on Oversight Costs set forth at Paragraph 64.

c. If such event is not the result of the performance of the Work, and the property at which the event occurs or from which the release or threat of release arises is not owned by any Owner Settling Defendant, and the event becomes known to the Performing Defendants, the Performing Defendants shall immediately notify EPA and the State as provided in paragraph 61.a.

62. 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 by Plaintiffs).

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

63. a. In reimbursement of Past Response Costs, plus Interest on such amount that has accrued since April 30, 1998, Settling Defendants on August 27, 1999 deposited \$5,594,205.30 into an escrow account, bearing interest at a commercially reasonable rate, in a federally chartered bank doing business in the State of Vermont, pursuant to the Past Costs Escrow Account attached hereto as "Appendix K."

b. All funds paid into the Past Costs Escrow Account by the Settling Defendants shall remain in the Past Costs Escrow Account and may not be withdrawn by any person, except to make the payments required by the following Subparagraphs 63.c. and 63.d., unless one of the following events occurs: (i) the United States withdraws its consent to the entry of this

Consent Decree after the Consent Decree has been executed; (ii) the United States does not request judicial approval of this Consent Decree or request a modification of this Consent Decree from the Settling Defendants within one year of the date of its lodging with the Court; or (iii) a final judicial determination is made that the Consent Decree will not be approved and entered in the form signed by the Parties. If one of these events occurs, all sums in the Past Costs Escrow Account, including interest, shall be returned to the Settling Defendants. The signatories to the Past Costs Escrow Account shall pay all fees, costs, taxes, and charges related to the Past Costs Escrow Account, and those amounts shall not be deducted from the principal or interest in the Past Costs Escrow Account. Any changes in the Escrow Agreement or the Escrow Agent shall be subject to approval by EPA.

c. Within thirty (30) days of entry of the Consent Decree \$2,000,000 shall be transferred from the Past Costs Escrow Account and deposited into the Second Past Costs Escrow Account (a copy of the Second Past Costs Escrow Account Agreement is attached as "Appendix L"). The signatories to the Second Past Costs Escrow Account shall pay all fees, costs, taxes, and charges related to the Second Past Costs Escrow Account, and those amounts shall not be deducted from the principal or interest in the Second Past Costs Escrow Account. Any changes in the Escrow Agreement or the Escrow Agent shall be subject to approval by EPA.

d. Simultaneously with the transfer described in Paragraph 63.c. above, all remaining amounts in the Past Costs Escrow Account shall be paid to the EPA Hazardous Substance Superfund, in reimbursement of Past Response Costs, plus Interest on such amount that has accrued during the period from April 30, 1998 through the date of payment. Payment to the EPA Hazardous Substance Superfund shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing the U.S.A.O. file number, the EPA Region and Site/Spill ID #0119, and DOJ case number 90-11-3-409A. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Vermont following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

Margery Adams
Sr. Asst. Enforcement Counsel
United States Environmental Protection Agency,
Office of Environmental Stewardship,
One Congress Street (SEL)
Boston, MA 02114

e. Within 90 days of the payments or transfers described in Subparagraphs 63.c. and 63.d. above, the Performing Settling Defendants shall close the Past Costs Escrow Account and provide to EPA an accounting of the transactions involving that account.

f. Except as provided in this Consent Decree and in the Past Costs Escrow Account Agreement, Green Mountain Power Corporation ("GMP") shall have no right, title to, control of or interest in the funds contained in the Past Costs Escrow Account. GMP shall have no right, title to, control of or interest in any amounts contained in the Second Past Costs Escrow Account; provided, however, that GMP may challenge, pursuant to Section XIX of this Consent Decree, whether payments from the Second Past Costs Escrow Account relate to work required under this Consent Decree. Any amounts paid to contractors of GMP from the Second Past

Costs Escrow Account for Work required under this Consent Decree shall be at the sole discretion of the United States, New England Electric System ("NEES") and Vermont Gas Systems, Inc. ("VGS"), as provided herein. All disputes, challenges or proceedings relating to the Past Costs Escrow Account or the Second Past Costs Escrow Account shall be resolved pursuant to the Section XIX of this Consent Decree.

g. If, prior to Certification of Completion of the Remedial Action under Paragraph 59.b. of this Decree, EPA determines that GMP is the subject of a voluntary or involuntary bankruptcy proceeding, then: (i) the United States, NEES and VGS may unanimously agree, each in their sole discretion, to allow GMP to continue implementing the required Work, and NEES and VGS shall use funds from the Second Past Costs Escrow Account to pay that portion of the cost of performing the Work that constitutes GMP's presently established contractual share of the Work performed; or (ii) NEES and VGS shall assume primary responsibility for implementing the required Work. NEES and VGS shall be reimbursed for the Work from the Second Past Costs Escrow Account, in the manner described in Subparagraph 63.h. below, until exhaustion of the Escrow Account or Certification of Completion of Remedial Action, whichever shall first occur.

h. Within ten days of submitting to EPA supporting invoices, NEES and VGS shall receive from the Second Past Costs Escrow Account GMP's presently established contractual share of the costs of the Work performed under such invoices until Certification of Completion of the Remedial Action. GMP's presently established contractual share of the costs of such Work shall be determined by the United States, and shall be based on the agreements between GMP and any other potentially responsible parties or parties concerning the costs of such Work. Upon entry of this Consent Decree, GMP shall submit to EPA, NEES and VGS copies of all such agreements. All Settling Defendants hereby agree to such submission. If EPA or any Performing Defendant disagrees with the payment of any invoice under this subparagraph, the United States or that Performing Defendant may dispute such payment in accordance with the dispute resolution provisions of this Consent Decree.

i. Upon Certification of Completion of the Remedial Action, the Performing Defendants shall provide the United States with a full accounting of funds expended from the Second Past Costs Escrow Account, and all funds in said account not owed to NEES or VGS under Subparagraph 63.h. shall be transferred to the EPA Hazardous Substance Superfund pursuant to the deposit instructions in Subparagraph 63.d.

j. As soon as reasonably practicable after the effective date of this Consent Decree, the United States, on behalf of the Settling Federal Agencies, shall pay to the Performing Defendants \$500,000 in reimbursement of the Settling Defendants' past response costs and the Settling Federal Agencies' share of Past Response Costs, Future Response Costs, State Past Response Costs, State Future Response Costs, and Natural Resource Damage Costs. Such payments shall be made in the form of a check or checks made payable to "Second Pine Street Canal Site Trust Fund" and sent to David O. Ledbetter, Trustee, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, VA 23219-4074, or by Electronic Funds Transfer in accordance with instructions provided by Mr. Ledbetter, or to such other trustee or account as may be jointly specified in writing by the Performing Defendants. In the event such payment required by this subparagraph is not made within 30 days of the effective date of this Consent Decree, Interest on the unpaid balance shall be paid commencing on the effective date of this Consent Decree and accruing through the date of the payment. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay

funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

64. a. Performing Defendants shall reimburse the EPA Hazardous Substance Superfund for all Oversight Response Costs not inconsistent with the National Contingency Plan and all Future Response Costs not inconsistent with the National Contingency Plan. The United States will send Performing Defendants a bill requiring payment for Oversight Response Costs that includes the following: (a) A SCORES report or comparable summary listing intramural and extramural costs incurred by EPA; (b) A summary listing direct labor, other direct costs and indirect costs incurred by the Department of Justice, if any; and (c) a statement that the costs included on the summary or summaries are compiled from the EPA or DOJ accounting system and represent only costs incurred in connection with the Site for Oversight Response Costs that have not been previously billed (except for any listing of an unpaid balance from a previous bill). The United States shall use best efforts to send such a bill annually, and to ensure that all direct and indirect costs for the prior year are included in the bill, but the United States may carry costs over to bills in subsequent years. Additional documentation shall not be required to establish the amounts incurred. The United States will send the Performing Defendants a bill for Future Response Costs as necessary. Performing Defendants shall make all payments under this Paragraph within 30 days of Performing Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 64.c. The Performing 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 ID # 0119, the DOJ case number 90-11-3-409A, and the name and address of the party making payment. The Performing Defendants shall send the check(s) to:

Region I
U.S. Environmental Protection Agency
Attn: Superfund Accounting
PO Box 360197 M
Pittsburgh, PA 15251

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

United States Environmental Protection Agency,
Office of Environmental Stewardship,
Attn: Pine Street Canal Superfund Site Attorney
One Congress Street, Suite 1100
Boston, MA 02114

b. Performing Defendants shall reimburse the State for: (i) all State Oversight Costs not inconsistent with the National Contingency Plan, in an amount not to exceed \$150,000, and (ii) one hundred percent (100%) of all State Future Response Costs not inconsistent with the National Contingency Plan. The State will send Performing Defendants an annual bill requiring payment that includes a standard State-prepared cost summary, which includes direct and indirect costs incurred by the State and its contractors during the prior calendar year. The State shall use best efforts to ensure that all direct and indirect costs for the prior calendar year are included in the bill, but may carry costs over to bills in subsequent years. Performing Defendants shall make all payments under this Paragraph within 30 days of Performing Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 64.c. The Performing Defendants shall make all payments to the State required by this Paragraph in the form of a certified check or checks made payable to the Secretary of the

Vermont Agency of Natural Resources. The Performing Defendants shall send the certified check(s) to the Secretary, Vermont Agency of Natural Resources, 103 South Main Street, Waterbury, VT 05671. Copies of the check and transmittal letter should be sent to Stanley Comeille, State Project Coordinator, Site Management Section, 103 South Main Street, Waterbury, VT 05671-1404, and to Erick Titrud, Office of the Attorney General, 109 State Street, Montpelier, VT 05609-1001.

c. Performing Defendants may contest payment of any Oversight Response Costs, Future Response Costs, State Oversight Costs, or State Future Response Costs, under Paragraph 64.a. or 64.b. 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, or otherwise is not subject to recovery under this Consent Decree. In addition, Performing Defendants may contest payment of State Oversight Costs if they allege that the limit established in Paragraph 64.b. has been met. 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' bill is being disputed) or the State (if the State's bill is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Oversight Response Costs, Future Response Costs, State Oversight Costs, or State Future Response Costs, and the basis for objection. In the event of an objection, the Performing Defendants shall within the 30 day period pay all uncontested Response Costs to the United States or the State in the manner described in Paragraph 64.a and 64.b. Simultaneously, the Performing 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 Oversight Response Costs, Future Response Costs, State Oversight Costs, or State Future Response Costs. The Performing Defendants shall send to the United States and the State, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Performing 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 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 64.a and 64.b. If the Performing Defendants prevail concerning any aspect of the contested costs, the Performing 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 64.a and 64.b; Performing 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 Defendants' obligation to reimburse the United States and the State for their Oversight Costs, Future Response Costs, State Oversight Costs, and State Future Response Costs.

65. In the event that the payments required by Paragraph 64 are not made within 30 days of the Performing Defendants' receipt of the bill, Performing Defendants shall pay interest on the unpaid balance. The interest on Oversight Response Costs, Future Response Costs, State Oversight Costs, and State Future Response Costs shall begin to accrue on the date of the bill. The interest shall accrue through the date of the Performing 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 Defendants' failure to make timely

payments under this Section. The Performing Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 64.a and 64.b.

66. a. Within 30 days of the effective date of this Consent Decree, the Performing Defendants and Owner Settling Defendants shall pay the Federal Trustee \$24,150 in full satisfaction of DOI's claims for Past Federal Trustee Costs and \$25,000 in full satisfaction of DOI's claims for Federal Trustee Oversight Costs. Payment shall be by FedWire Electronics Funds Transfer to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, and referencing Account No. 14X5198 (NRDAR), DOJ Number 90-11-3-409A, the USAO number, and the Pine Street Canal Superfund Site. Interest shall accrue on the Past Federal Trustee Costs from April 30, 1998 until the date of payment. Any payments received after 4:00 p.m Eastern Time shall be credited on the next business day. Performing Defendants shall send the notice of payment to Bruce Nesslage, DOI Restoration Fund, NBC/Division of Financial Management Services, Branch of Accounting Operations, Mail Stop 1313, 1849 C Street, N.W., Washington, D.C. 20240, with a copy to: Mark Barash, Office of the Regional Solicitor, U.S. Department of Interior, One Gateway Center, Suite 612, Newton Corner, MA 02158-2868, shall reference Account Number 14X5198, and shall state that the payment is for Past Federal Trustee Costs and Federal Trustee Oversight Costs in connection with the Pine Street Canal Superfund Site.

b. The Settling Defendants shall not be required to make any payment to the State for past costs of response or past State Trustee costs. The Performing Defendants shall pay the State for State Trustee Oversight Costs in an amount not to exceed \$50,000. The State will send the Performing Defendants a bill for such State Trustee Oversight Costs on a periodic basis. Payment(s) to the State for State Trustee Oversight Costs shall be in the form of a certified check made payable to the State of Vermont and referencing the name of the Pine Street Canal Superfund Site. The Performing Defendants shall make all payments to the State required by this Paragraph in the form of a certified check or checks made payable to the Secretary of the Vermont Agency of Natural Resources. The Performing Defendants shall send the certified check(s) Secretary, Vermont Agency of Natural Resources, 103 South Main Street, Waterbury, VT 05671. Copies of the check and transmittal letter should be sent to Stanley Corneille, State Project Coordinator, Site Management Section, 103 South Main Street, Waterbury, VT 05671-1404, and to Erick Titrud, Office of the Attorney General, 109 State Street, Montpelier, VT 05609-1001.

XVII. INDEMNIFICATION AND INSURANCE

67. a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as authorized representatives of EPA under Section 104(e) of CERCLA or as authorized representatives of the Federal and State Trustees. Performing 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 Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Each Owner Settling Defendant 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 such Owner Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities

pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA.

b. Further, the Performing Defendants, or as applicable each Owner Settling Defendant, agree(s) 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 the Performing Defendants, or as applicable such Owner Settling Defendant, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

c. The United States and the State shall give Performing Defendants, or as applicable each Owner Settling Defendant, notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 67.a, and shall consult with Performing Defendants, or as applicable each Owner Settling Defendant, prior to settling such claim.

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

69. No later than 15 days before commencing any on-site Work or Natural Resource Project, Performing Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 59.b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States and the State as additional insureds in connection with any liability arising out of activities at the Site or performance of the Work or Projects. In addition, for the duration of this Consent Decree, Performing 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 or any Project on behalf of Performing Defendants in furtherance of this Consent Decree. Prior to commencement of the Work or any Natural Resource Compensatory Restoration Project under this Consent Decree, Performing Defendants shall provide to EPA, the State and the Trustees certificates of such insurance and a copy of each insurance policy. Performing Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree; provided, however, that copies need not be submitted to the Trustees after the completion of the Projects. If Performing 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 Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

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

71. If any event occurs or has occurred that may delay the performance of any material obligation under this Consent Decree, whether or not caused by a force majeure event, the 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 five days of the time when Settling Defendants first knew that the event might cause a delay. The Settling Defendants shall provide the same notice to the State Project Coordinator, or if he or she is unavailable, to the Emergency Response Program at (802) 244-8721. If the event may delay performance of any Project, the notice shall be given to the Federal Trustee and the State Trustee. Within seven (7) days thereafter, Settling Defendants shall provide in writing to the State and EPA or the Trustees an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure event. Failure to comply with the above requirements shall preclude 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. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

72. If EPA (for the Work) or the Federal Trustee (for the Projects), 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 affected by the force majeure event will be extended by EPA or the Federal Trustee, 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 or the Federal Trustee, 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 or the Federal Trustee will notify the Settling Defendants in writing of its decision. If EPA or the Federal Trustee, after a

reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA or the Federal Trustee will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

73. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) concerning an asserted force majeure event, they shall do so no later than 15 days after receipt of notice by EPA or the Federal Trustee pursuant to paragraph 72. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 70 and 71, above. If Settling Defendants carry this burden, the delay at issue shall not be deemed a violation by Settling Defendants of the affected obligation(s) of this Consent Decree identified to EPA or the Federal Trustee and the Court.

XIX. DISPUTE RESOLUTION

74. 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 the Settling Defendants, disputes between the State and the Settling Defendants, or disputes between the Trustees and the Settling Defendants, arising under or with respect to this Consent Decree. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 75 to 79. The State may participate in such dispute resolution procedures to the extent specified in Paragraphs 75 to 79. Disputes between the State and the Settling Defendants are governed by Paragraph 80. Disputes between the Trustees and the Settling Defendants are governed by Paragraph 81. 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.

75. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of prompt, good faith 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.

76. 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 77 or Paragraph 78.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA, after reasonable opportunity for review and comment by the State, and if it does not agree with the Settling Defendants, will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position

shall include a statement as to whether formal dispute resolution should proceed under Paragraph 77 or 78. The State may also submit a Statement of Position within the fourteen day time limit set forth above in this Paragraph. Within five (5) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 77 or 78, 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 77 or 78.

77. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action, and all other disputes that are, by law, 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 or authorization by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be compiled and maintained by EPA and shall contain, without limitation, 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 a final administrative decision resolving the matters in dispute based only on the administrative record compiled in accordance with Paragraphs 76 and 77.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 77.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 77.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 shall submit to the Court the administrative record compiled in accordance with Paragraphs 76 and 77.a, and may file a response to Settling Defendants' motion within 30 days of the 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 77.a.

78. 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 76, the Director of the Office of Site Remediation and Restoration, EPA

Region I, will issue a final decision resolving the matters in dispute. The 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 file a response to Settling Defendants' motion within 30 days of the motion.

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

79. 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 91. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

80. Disputes solely between the State and the Settling Defendants. Disputes arising under the Consent Decree between the State and the Settling Defendants that relate to State Oversight Costs, Future State Response Costs owed to the State, Future State Trustee Costs, assessment of stipulated penalties by the State, or the Settling Defendants' failure to submit deliverables to 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 75-79, except that each reference to EPA shall be 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.

81. Disputes solely between the Federal and State Trustees and the Settling Defendants. Disputes arising under the Consent Decree relating to the Natural Resource Compensatory Restoration Projects shall be governed by the procedures for resolving the disputes set forth in Paragraphs 75-79, except that each reference to EPA shall be read as a reference to the DOI and 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, Northeast Region, U.S. Fish & Wildlife Service, and each reference to the Work or response actions shall be read as a reference to the Projects.

XX. STIPULATED PENALTIES

82. a. Performing Defendants shall be jointly and severally liable to the United States and the State for stipulated penalties and liquidated damages in the amounts set forth in Paragraphs 83, 84 and 85 for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). Owner Settling Defendants shall be individually liable to the United States and the State for stipulated penalties in the amounts set forth in Paragraphs 83 and 84 for failure to comply with the requirements of this Consent Decree specified below which are applicable to them, unless excused under Section XVIII (Force Majeure). "Compliance" 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, the

NRCRP SOW, and any plans or other documents approved by EPA or the Federal and State Trustees pursuant to this Consent Decree and within the specified time schedules established by or pursuant to this Consent Decree.

b. When the United States enforces stipulated penalties, the United States shall receive ninety percent (90%) of the stipulated penalties paid pursuant to paragraphs 83 and 84, and the State shall receive ten percent (10%) of the stipulated penalties paid. When the State enforces stipulated penalties, the State shall receive ninety percent (90%) of the stipulated penalties paid pursuant to paragraphs 83 and 84, and the United States shall receive ten percent (10%) of the stipulated penalties paid. The fact that the United States or the State, under the circumstances set out below, may pursue stipulated penalties shall not increase the total liability of the Settling Defendants for stipulated penalties.

c. The United States shall have the first opportunity to pursue stipulated penalties for all violations of this Consent Decree. If the United States does not pursue stipulated penalties within forty-five (45) days of the date on which the United States becomes aware of a failure to comply, then the State may pursue stipulated penalties in the same manner as the United States is authorized to pursue stipulated penalties under this Consent Decree. Nothing herein shall preclude the United States from pursuing stipulated penalties except where the State has already pursued stipulated penalties from the non-compliant Settling Defendant(s) in accordance with this Subparagraph.

83. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b of this Paragraph:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,500	1st through 14th day
\$ 4,000	15th through 30th day
\$ 7,000	31st day and beyond

b. Violations or Compliance Milestones.

- (1) Remedial Design Work Plan and Projects Operations Plan
- (2) Historical Resources Study Report
- (3) Institutional Controls Plan
- (4) Conceptual Design Package
- (5) Intermediate Design Package (60% design)
- (6) Pre-Final Design Package (95% design)
- (7) Final Design Package (100% design)
- (8) Field Sampling Plan for Compliance Monitoring
- (9) Compliance Monitoring Work Plan
- (10) Initiation of Construction
- (11) Construction Completion Report
- (12) Demonstration of Compliance Report
- (13) Five year review reports

(14) Failure to comply with the obligations of paragraph 9 (Notice to Successors-in-Title) or Section IX (Access and Institutional Controls)

(15) Failure to comply with the requirements of Section XV (Emergency Response); and

(16) Failure to comply with the payment requirements of Section XVI (Reimbursement of Response Costs and Payment for Natural Resource Damages).

84. a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs Section X (Reporting Requirements):

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

b. The following stipulated penalties shall accrue per violation per day for any noncompliance related to performance under this Consent Decree which is not specifically referred to in paragraphs 83, 84.a, 85 or 86:

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

85. The following liquidated damages shall accrue per violation per day for failure to comply with the requirements of this Consent Decree relating to performance of the Projects:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,500	1st through 14th day
\$ 4,000	15th through 30th day
\$ 7,000	31st day and beyond

86. In the event that EPA assumes performance of the Work pursuant to Paragraph 104 of Section XXI (Covenants by Plaintiffs), Performing Defendants shall be liable to the United States for a stipulated penalty in the following amounts: (a) Performing Defendants shall pay a stipulated penalty of seven hundred and fifty thousand dollars (\$750,000) if EPA assumes performance of the Work prior to the Certification of Completion of the Remedial Action pursuant to paragraph 59 of this Decree; and (b) Performing Defendants shall pay a stipulated penalty of three hundred thousand dollars (\$300,000) if EPA assumes performance of the Work after the Certification of Completion of Remedial Action but prior to the Certification of Completion of the Work.

87. All penalties and liquidated damages shall begin to accrue on the day after the complete performance is due or the 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 the Performing Defendants or the non-compliant Owner Settling Defendant(s) 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 77.b or 78.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that the Performing Defendants' or the non-compliant Owner Settling Defendant(s)' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (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.

88. Following a determination by EPA or the Federal Trustee that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, or the Federal Trustee (or the State as provided in Paragraph 82.c) may give the Performing Defendants or the non-compliant Owner Settling Defendant(s) written notification of the same and describe the noncompliance. EPA or the Federal Trustee may send the Performing Defendants or the non-compliant Owner Settling Defendant(s) a written demand for the payment of the penalties or liquidated damages. However, penalties and liquidated damages shall accrue as provided in the preceding Paragraph regardless of whether EPA or the Federal Trustee has notified the Settling Defendants of a violation.

89. All penalties and liquidated damages accruing under this Section shall be due and payable to the United States and the State within 30 days of the Settling Defendants' receipt from EPA, the Federal Trustee or the State of a demand for payment of the penalties or liquidated damages, unless the Performing Defendants or the non-compliant Owner Settling Defendant(s) invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution).

a. All payments to the United States for stipulated penalties under Paragraphs 83, 84 or 86 (relating to the Work) shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to Region I, U.S. Environmental Protection Agency, Attn: Superfund Accounting, PO Box 360197M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #0119, the DOJ Case Number 90-11-3-409A, and the name and address of the party making payment. All payments to the State under this Section shall be made payable to the Treasurer, State of Vermont, and shall be mailed to the Secretary, Vermont Agency of Natural Resources, 113 South Main Street, Waterbury, VT 05671, shall reference the Pine Street Canal Site, and shall indicate that the payment is for stipulated penalties. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and the State as provided in Section XXVI (Notices and Submissions).

b. All payments to the United States for liquidated damages under Paragraph 85 (relating to the Projects) shall be paid by certified or cashier's check(s) made payable to "United States Department of Interior," shall be mailed 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 indicate that the payment is for liquidated damages, and shall reference the Pine Street Canal Superfund Site, Account Number 14X5198, the DOJ Case Number 90-11-3-409A, and the name and address of the party making payment. All payments to the State under this Section shall be made payable to the Treasurer, State of Vermont, and shall be mailed to the Secretary, Vermont Agency of Natural Resources, 113 South Main Street, Waterbury, VT 05671, shall reference the Pine Street Canal Site, and shall indicate that the payment is for

liquidated damages. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and the State as provided in Section XXVI (Notices and Submissions).

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

91. Except as provided in paragraphs 79 and 87, penalties and liquidated damages, shall continue to accrue as provided in Paragraphs 83-85 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 or the Federal Trustee that is not appealed to this Court, accrued penalties or liquidated damages, determined to be owing shall be paid to the United States and the State within 15 days of the agreement or the receipt of EPA's or the Federal Trustee's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, the Performing Defendants or the non-compliant Owner Settling Defendant(s), as applicable, shall pay all accrued penalties or liquidated damages, determined by the Court to be owed to the State and EPA or the Federal Trustee 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, the Performing Defendants or the non-compliant Owner Settling Defendants, as applicable, shall pay all accrued penalties or liquidated damages determined by the District Court to be owing to the United States or the State into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties or liquidated damages 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 the United States and the State, or to appropriate Settling Defendants to the extent that they prevail.

92. a. If Performing Defendants or non-compliant Owner Settling Defendant(s) fail to pay stipulated penalties or liquidated damages when due, the United States or the State may institute proceedings to collect the penalties, as well as interest. Such non-compliant Performing Defendants or Owner Settling Defendant(s) shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 89.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA, and the State shall not seek civil penalties pursuant to Section 122(l) of CERCLA or any other provision of law, for any violation for which a stipulated penalty has been collected hereunder, except in the case of a willful violation of this Consent Decree.

93. Notwithstanding any other provision of this Section, where the United States or the State has pursued stipulated penalties, the United States or the State may, in its unreviewable discretion, waive any portion of its share of stipulated penalties or liquidated damages that have accrued pursuant to this Consent Decree.

XXI. COVENANTS BY PLAINTIFFS

94. Covenants by the United States. a. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants and the Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 95, 96, 98, and 103 of this Section, the United States on behalf of EPA and DOI covenants not to sue or to take administrative action against Settling Defendants pursuant to either Section 106 or Section 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA and the Federal Trustee of the payments required by Paragraphs 63.d. and 66 of Section XVI (Reimbursement of Response Costs); provided however, except with respect to future liability, that the covenants not to sue the Non-Performing Defendants listed in Appendix H shall take effect upon entry of this Consent Decree; and provided further, that the United States shall retain an undisputed claim in the amount of \$2,000,000 plus Interest from the date of entry of this Consent Decree against Green Mountain Power Corporation for reimbursement of Past Response Costs, which shall be satisfied in full or reduced, as the case may be, by full or partial payment to the United States of the principal and interest in the Second Past Costs Escrow Account pursuant to paragraph 63.i. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 59.b. of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

b. In consideration of the payments that will be made by the Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 95, 96 and 103 of this Section, EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, EPA's covenant shall take effect upon the receipt of the payments required by Paragraph 63 of Section XVI (Reimbursement of Response Costs). With respect to future liability, EPA's covenant shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 59.b of Section XIV (Certification of Completion). EPA's covenant is conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenant extends only to the Settling Federal Agencies and does not extend to any other person.

95. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants, and EPA reserves the right to issue an administrative order to compel the Settling Federal Agencies:

- 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 Remedial Action:
 - (1) conditions at the Site, previously unknown to EPA, are discovered,or
 - (2) information, previously unknown to EPA, is received, in whole or in part,

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

96. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants and EPA reserves the right to issue an administrative order to compel the Settling Federal Agencies:

- 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 Remedial Action:
 - (1) conditions at the Site, previously unknown to EPA, are discovered,or
 - (2) information, previously unknown to EPA, is received, in whole or in part,

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

97. For purposes of Paragraph 95, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 96, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received or developed by EPA pursuant to the provisions of this Consent Decree prior to Certification of Completion of the Remedial Action.

98. Reservations Concerning Natural Resource Damages. Notwithstanding any other provision of this Decree, the United States and the State, on behalf of their respective Trustees, DOI and ANR, reserve the right to institute proceedings against Settling Defendants and the Settling Federal Agencies 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 the Federal Trustee or the State Trustee 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 said natural resources at the Site, or
- b. Information received by the Federal Trustee or the State Trustee after the date of lodging of this 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 substantially greater than was known, to the Federal Trustee or the State Trustee at the date of lodging of this Decree.
- c. For purposes of this paragraph 98, the information and conditions known to the Federal Trustee shall be that information and those conditions known to EPA as defined in paragraph 97. For purposes of this paragraph 98, the information known to the State Trustee shall be the information and those conditions known to the State as defined in paragraph 102.

99. State's Covenant Not to Sue. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants and the Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 98, 100, 101 and 103 of this Section, the State covenants not to sue or to take administrative action against Settling Defendants or the Settling Federal Agencies pursuant to Sections 107(a) of CERCLA, 10 V.S.A. § 6615, and 10 V.S.A. ch. 201 relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by the State of the payments required by Paragraph 66.b of Section XVI (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 59.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants and the Settling Federal Agencies of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and the Settling Federal Agencies, and do not extend to any other person.

100. 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 10 V.S.A. § 6615 seeking to compel all or any of the 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 Remedial Action, if, prior to Certification of Completion of the Remedial Action:

(1) conditions at the Site, previously unknown to the State, are discovered or become known to the State, or

(2) information previously unknown to the State is received by the State, in whole or in part,

and the Secretary of the Vermont Agency of Natural Resources, or his or her delegate determines, pursuant to 10 V.S.A. Chapters 159, 201 or 211, 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.

101. 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 10 V.S.A. § 6615 seeking to compel all or any of the 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 Remedial Action, if, subsequent to Certification of Completion of Remedial Action:

(1) conditions at the Site, previously unknown to the State, are discovered or become known by the State after the Certification of Completion, or

(2) information previously unknown to the State is received by the State, in whole or in part, after the Certification of Completion,

and the Secretary of the Vermont Agency of Natural Resources, or his or her delegate, determines, pursuant to 10 V.S.A. Chapters 159, 201 or 211, 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.

102. For purposes of Paragraph 100, the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 101, the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received or developed by the State pursuant to the provisions of this Consent Decree prior to Certification of Completion of the Remedial Action.

103. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraphs 94 and 99. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA, the Federal Trustee and the State reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all other matters, including but not limited to, the following:

- a. claims based on a failure by Settling Defendants or the Settling Federal Agencies 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 ROD, the Work, or otherwise ordered by EPA;
- d. criminal liability;
- e. liability for violations of federal or state law which occur during or after implementation of the Work and the Projects;
- f. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 15 (Modification of the SOW or Related Work Plans);
- g. liability arising from the past, present or future disposal, release or threat of release of: stormwater entering the Site; substances subject to the exclusion for petroleum set forth in 42 U.S.C. § 9601(14); and discharges to the Site which are permitted pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342; and
- h. liability for additional institutional controls that EPA determines are necessary to achieve protection of human health or the environment.

104. Work Takeover. In the event EPA, after a reasonable opportunity for review and comment by the State, determines that Performing Defendants have ceased implementation of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or that any Settling Defendant is 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. EPA agrees to provide the Performing Defendants with fourteen (14) days' prior notice, if practicable, before assuming the performance of the Work under this paragraph, but only if such assumption of the Work occurs because Performing Defendants are seriously or repeatedly deficient or late in their performance of the Work. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 77, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. If EPA assumes performance of the Work and the Settling Defendants do not prevail in a dispute under the procedures of Section XIX (Dispute Resolution) concerning the underlying dispute or EPA's assumption of the Work, Settling Defendants shall be liable for the appropriate stipulated penalty set forth in Paragraph 86. Costs incurred by the United States or the State in performing the Work pursuant to this Paragraph not inconsistent with the NCP shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs).

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

XXII. COVENANTS BY SETTLING DEFENDANTS AND THE SETTLING FEDERAL AGENCIES

106. Covenant Not to Sue by Settling Defendants. Except as otherwise provided in Paragraph 108, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, or the State, with respect to the Site 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, and any claim for reimbursement from the State;

b. any claims under CERCLA Sections 107 or 113 or 10 V.S.A. § 6615;

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

d. any claims arising under the United States Constitution, the Vermont Constitution, state law, the Tucker Act, 28 U.S.C. § 1491, or common law, arising out of or relating to past or future access to, imposition of deed restrictions or easements, or other restrictions on the use and enjoyment of property owned or controlled by the Settling Defendants; and

e. any claims for costs, fees or expenses incurred in this action (including claims arising under the Equal Access to Justice Act, as amended, 28 U.S.C. § 2412) or under any provision of State law.

107. Covenant by the Settling Federal Agencies. The Settling Federal Agencies hereby agree not to assert any direct or indirect claim with respect to the Site 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, for Past Response Costs, Oversight Costs, and Future Response Costs as defined herein, or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the

performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

108. The Settling Defendants reserve, and this Consent Decree is without prejudice to:

a. 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; and

b. contribution claims against the Settling Federal Agencies in the event any claim is asserted by the United States or the State against the Settling Defendants under the authority of or under Paragraphs 95, 96, 98, 100, 101, or 103 of Section XXI (Covenants by Plaintiffs), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States or the State against Settling Defendants.

c. Notwithstanding any provisions of this Consent Decree to the contrary, General Dynamics Armament Systems, Inc. (collectively "General Dynamics"), on its own behalf and on behalf of its successors and assigns, reserves all claims, rights and defenses it may have, including claims pursuant to CERCLA, against the United States and its agencies (excluding EPA) for recovery of any costs which General Dynamics incurs or has incurred in performing corrective actions, including voluntary corrective actions, at its Lakeside Avenue facility pursuant to its obligations as a RCRA-permitted or RCRA interim status facility under state or federal laws or regulations. The United States and its agencies reserve all claims, rights, and defenses they may have with respect to any such claims brought against them by General Dynamics.

109. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

110. 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.

111. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and the Settling Federal Agencies are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims to the extent provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), and 10 V.S.A. §6615(i) for all matters addressed in this Consent Decree. Matters addressed in this Consent Decree are: implementation of the remedy as specified in the ROD, EPA's and the State's Past Response

Costs, Oversight Response Costs and Future Response Costs, implementation of the Projects, and the United States' and the State's Natural Resource Damages Costs. Matters addressed in this Consent Decree do not include those claims expressly reserved in this Consent Decree.

112. The Settling Defendants and the Settling Federal Agencies agree that with respect to any suit or claim for contribution brought by them for matters addressed in this Consent Decree they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim.

113. The Settling Defendants and the Settling Federal Agencies also agree that with respect to any suit or claim for contribution brought against them for matters addressed in 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 and the Settling Federal Agencies 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.

114. 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, Settling Defendants and the Settling Federal Agencies 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 by Plaintiffs). Except as provided in the foregoing sentence, Settling Defendants do not waive any defenses they may have in any subsequent action or proceeding.

XXIV. ACCESS TO INFORMATION

115. 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. Upon request, Settling Defendants shall provide to the State and Federal Trustee copies of all documents and information within their possession or control or that of their contractors or agents relating to the Projects. 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.

116. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to EPA or the State 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 Plaintiffs, or if the United States 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, work product doctrine, 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, to the extent that such description would not compromise the privilege asserted; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated in order to implement the Work or the Projects pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

117. 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.

XXV. RETENTION OF RECORDS

118. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 60.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, the Projects, or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 60.b of Section XIV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work or the Projects.

119. 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, the Federal Trustee, or the State. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege, the work product doctrine, or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information, to the extent that such description would not compromise the privilege asserted; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated in order to implement the Work or the Projects pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged. Settling Defendants shall retain all documents asserted to be privileged until such time as any dispute regarding such privilege has been resolved.

120. a. 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 (other than completely redundant duplicates) 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 responded to 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.

b. The United States acknowledges that the Settling Federal Agencies: (1) are subject to all applicable Federal record retention laws, regulations, and policies; and (2) have 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.

XXVI. NOTICES AND SUBMISSIONS

121. 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 sent 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 Federal Trustee, the State, the Settling Defendants and the Settling Federal Agencies, 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 # 90-11-3-409A

and

Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DJ # 90-11-3-409A

and

Director, Office of Site Remediation and Restoration
United States Environmental Protection Agency
Region I
One Congress St., Suite 1100 (HIO)
Boston, MA 02114

As to EPA:

Karen Lumino, Remedial Project Manager
Pine Street Canal Superfund Site
United States Environmental Protection Agency
Region I
One Congress St., Suite 1100 (HBT)
Boston, MA 02203

As to the Federal Trustee:

Field Supervisor
U.S. Fish and Wildlife Service
22 Bridge St.
Concord, NH 03301

and

Mark Barash
Office of the Regional Solicitor

U.S. Department of Interior
One Gateway Center, Suite 612
Newton Corner, MA 02158-2868

As to the State:

Chief, Public Protection Division
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

and

Pine Street Canal Superfund Site Project
Coordinator
Vermont Department of Environmental
Conservation
Sites Management Section
103 South Main St.
Waterbury, VT 05676

As to the Settling Defendants:

Stephen C. Terry
Senior Vice President, Corporate Development
Green Mountain Power Corporation
163 Acorn Street
Colchester, VT 05446

As to the Settling Federal Agencies:

Gene Del Tredici
U.S. Department of Commerce
Office of General Counsel
Room 5890
14th and Constitution Ave., N.W.
Washington, DC 20230

Sharon Chen
U.S. General Services Administration
Office of General Counsel
Room 4131, Mail Code LR
1800 F. St., N.W.
Washington, D.C. 20405

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

123. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or

stipulated 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.

XXIX. APPENDICES

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

"Appendix A" is the ROD.

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

"Appendix C" is the SOW.

"Appendix D" is the NRCRP Plan.

"Appendix E" is the complete list of the Settling Defendants and the Settling Federal Agencies.

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

"Appendix G" is the complete list of Performing Defendants.

"Appendix H" is the complete list of Non-Performing Defendants.

"Appendix I" is the list of properties requiring Institutional Controls.

"Appendix J" is the draft form of easement.

"Appendix K" is the Past Costs Escrow Agreement.

"Appendix L" is the Second Past Costs Escrow Agreement.

XXX. COMMUNITY RELATIONS

125. 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, after a reasonable opportunity for review and comment by the State, will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA, the Federal Trustee, and the State in providing information regarding the Work to the public. As requested by EPA, the Federal Trustee, or the State, 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, the Federal Trustee, or the State to explain activities at or relating to the Site.

XXXI. MODIFICATION

126. Except as provided in Paragraph 15 ("Modification of the SOW or Related Work Plans"), material modifications to the SOW may be made only by written notification to and written approval of the United States, Performing Defendants, Owner 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.

127. 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 Defendants and the Settling Defendants. Schedules for completion of the Projects, and modifications to the NRCRP SOW may be made by written agreement between the Federal Trustee, the State Trustee and the Performing Defendants.

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

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

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

131. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice. The State may withdraw or withhold its consent to this Consent Decree if comments received disclose facts or considerations which indicate 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.

132. 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.

XXXIII. SIGNATORIES/SERVICE

133. 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 Assistant 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.

134. 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.

135. 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 in this proceeding 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 this proceeding 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.

XXXIV. FINAL JUDGMENT

136. 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 and 58.

SO ORDERED THIS ____ DAY OF _____, ____.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR THE UNITED STATES OF AMERICA

11/19/55
Date

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

Date

Cynthia S. Huber
Cynthia S. Huber
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20530-7611
(202) 514-5273

Date

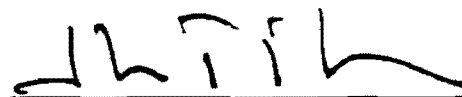
Daniel Pinkston by CSH
Daniel Pinkston
Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
999 18th St., Suite 945
North Tower
Denver, CO 80202

Date

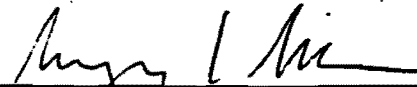
Joseph Perella
Joseph Perella
Assistant United States Attorney
District of Vermont
U.S. Department of Justice
P.O. Box 570
Burlington, VT 05402

9/30/99
Date

9/30/99
Date



John P. DeVillars
Regional Administrator, Region I
U.S. Environmental Protection Agency
One Congress Street
Boston, MA 02114



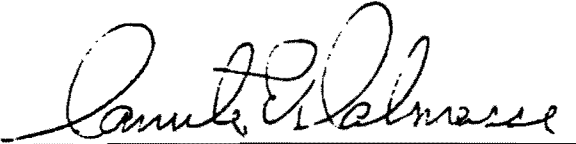
Margery L. Adams
Sr. Asst. Enforcement Counsel
U.S. Environmental Protection Agency
One Congress Street
Boston, MA 02114

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR THE STATE OF VERMONT

4/28/99

Date



Canute Dalmasse
Commissioner
Vermont Department of Environmental
Conservation
103 South Main St.
Waterbury, VT 05671-0404

9/28/99

Date

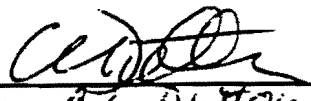


Erick Titrud
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR Green Mountain Power Corporation
(Name of entity)

9/27/1999
Date

Signature: 
Name (print): PJ Dutton
Title: President + CEO
Address: 163 Acorn Lane
Colchester VT 05446

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


Name (print): David O. Ledbetter, Esq.
Title: Hunton & Williams
Address: Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219-4074
Ph. Number: 804-788-8364

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR NEW ENGLAND ELECTRIC SYSTEM
(Name of entity)

9/28/99

Date

Signature: 
Name (print): CHERYL A. LAFLEUR
Title: SENIOR VICE PRESIDENT, GENERAL COUNSEL AND
Address: 25 RESEARCH DRIVE
WESTBOROUGH, MA 01582

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

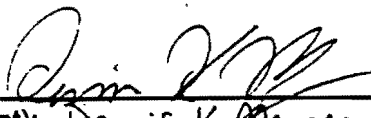
Name (print): CHERYL A. LAFLEUR
Title: SENIOR VICE PRESIDENT, GENERAL COUNSEL AND SECRETARY
Address: 25 RESEARCH DRIVE
WESTBOROUGH, MA 01582

Ph. Number: (508) 389 - 2554

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR Southern Union Co.
(Name of entity)

9/27/99
Date

Signature: 
Name (print): Dennis K. Morgan
Title: Sr. VP - Legal
Address: 504 Lavaca
Austin TX 78701

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

Name (print): Dennis K. Morgan
Title: Sr. V.P. - Legal
Address: 504 Lavaca, Suite 900
Austin, Tx. 78701
Ph. Number: (512) 370-8310

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

9/25/99
Date

FOR: UGI UTILITIES, INC.

Signature:
Name:


Robert J. Chaney

Title: President & CEO
Address: 100 Kachel Boulevard, Suite 400
Green Hills Corporate Center
Reading, PA 19607

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


Name: Thomas M. Jackal
Title: Group Counsel, Utilities
Address: UGI Corporation
P.O. Box 858
Valley Forge, PA 19482

Ph: Number: 610-337-1000 x3387

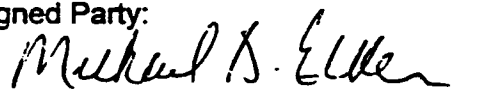
THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR General Electric
(Name of entity)

9/27/99
Date

Signature: 
Name (print): Thomas G. Corneil
Title: Manager, Northeast/Midwest Region
Address: 320 Great Oaks Boulevard
Suite 323
Albany, NY 12203


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

Signature: 
Name (print): Michael S. Elder
Title: Counsel, Northeast/Midwest Region
Address: 320 Great Oaks Boulevard
Suite 323
Albany, NY 12203
Ph. Number: 518-862-2737

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR Lockheed Martin Corporation
(Name of entity)

24 September 1999
Date

Signature: 
Name (print): NORMAN A. VARNEY, JR.
Title: Associate General Counsel - Env't, Health & Safety (E
Address: Lockheed Martin Corporation
P.O. Box 3048
Philadelphia, PA 19101

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

Name (print): Beth A. Hwaschinsky
Title: Associate Analyst - Legal
Address: Lockheed Martin Corporation
6801 Rockledge Drive
Bethesda, MD 20817
Ph. Number: (301) 297-6472

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR Lockheed Martin Corporation as
Successor-in-interest to Martin Marietta (C)
(Name of entity)

24 Sept-ber 1999
Date

Signature: [Signature]
Name (print): NORMAN A. VARNER, JR.
Title: Associate General Counsel - Env't, Health & Safety (C)
Address: Lockheed Martin Corporation
P.O. Box 9048
Philadelphia, PA 19101

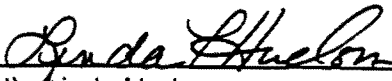
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name (print): Beth A. Hwaschinsky
Title: Associate Analyst - Legal
Address: Lockheed Martin Corporation
6801 Rockledge Drive
Bethesda, MD 20817
Ph. Number: (301) 897-6472

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR General Dynamics Armament Systems, Inc.

September 27, 1999
Date

Signature: 
Name (print): Linda Hudson
Title: President, General Dynamics Armament
Systems, Inc.
Address: Lakeside Avenue
Burlington, VT 05401

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

Name (print): Gary P. Kjelleren
Title: Director, Environmental Health and Safety
Address: Same
Ph. Number: (802) 657-7000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR Maytag Corporation
(Name of entity)

8-30-99
Date

Signature: *Steven H. Wood*
Name (print): STEVEN H. WOOD
Title: VICE PRESIDENT FINANCIAL REPORTING & AUDIT
Address: 403 W. 4TH ST. N., PO BOX 39
NEWTON, IA 50208

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

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR CITIZENS PROPERTIES, INC.
(Name of entity) FORMERLY CITIZEN'S OIL

9/23/99
Date

Signature: Michael E. Jarrett
Name (print): MICHAEL E. JARRETT
Title: PRES.
Address: 377 PINE ST.
P.O. BOX 146
BURLINGTON, VT. 05402

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


Name (print): SAME
Title: _____
Address: _____

Ph. Number: 802-238-7001

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR City of Burlington, Vermont
(Name of entity)

Sept. 23, 1999
Date

Signature: 
Name (print): Hon. Peter Clavelle
Title: Mayor
Address: Office of the Mayor
City Hall - Room 34
Burlington, VT 05401


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

Name (print): Brendan Keleher
Title: Clerk-Treasurer
Address: City Hall
149 Church Street
Burlington, VT 05401
Ph. Number: (802) 865-7019

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR Davis Development Corp
(Name of entity)

9/28/99
Date

Signature: 
Name (print): David Davis
Title: President
Address: 431 Pine St
Burl. VT 05401

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

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR The Malter Partnership
(Name of entity)

9/28/99
Date

Signature: [Signature]
Name (print): Derek Davis
Title: General Partner
Address: 431 Pine St
Burlington VT 05401

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

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR 453 Pine Street Associates
(Name of entity)

9/28/99
Date

Signature: [Signature]
Name (print): Derrick Davis
Title: President
Address: 431 Pine St
Burlington VT 05401

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


Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR BCV Corporation
(Name of entity)

9/28/99
Date

Signature: 
Name (print): Derrick Davis
Title: President
Address: 431 Pine St
Burlington, VT 05401

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

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR Specialty Filaments, Inc.
(Name of entity)

8/18/99
Date

Signature: [Signature]
Name (print): Linda D Lyness
Title: Chief Financial Officer
Address: 300 Brickstone Square
6th Floor
Andover, MA 01810

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

Name (print): TIMOTHY C. ATKINS
Title: ATTORNEY
Address: PEPPER HAMILTON LLP
SUITE 400, 1235 WESTLAKES
BERWYN, PA 19312-2401
Ph. Number: 610 640 7800
or 7843

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR UDV North America, Inc (former
(Name of entity) Heublein, Inc

9/17/99
Date

Signature: [Signature]
Name (print): L. Keith Wimbush
Title: Sr. VP
Address: 6 Landmark Square
Stamford, CT 06901

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

Name (print): CT Corporation System
Title: _____
Address: One Commercial Plaza
Hartford, CT 06103
Ph. Number: 860-724-9044

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR Vermont Agency of Transportation
(Name of entity)

28 Sept, 1999
Date

Signature: B. R. Charles
Name (print): Brian R. Charles
Title: Secretary of Transportation
Address: Vermont Agency of Transportation
133 State Street
Montpelier, VT 05633

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

Name (print): Thomas R. Viell
Title: Assistant Attorney General
Address: Vermont Agency of Transportation
133 State Street
Montpelier, VT 05633
Ph. Number: 802-838-3431
Fax Number: 802-828-3817
email: Tom.Viell@State.VT.us

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR THE UHLMANN COMPANY
(Name of entity)

8/20/99
Date

Signature: [Signature]
Name (print): STANLEY P. CYPHERS
Title: VICE PRESIDENT
Address: 1009 CENTRAL
Box 417410
KANSAS CITY, MO 64141

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

Name (print): Elken S. Goldman
Title: Counsel for Uhlmann Company
Address: Stinson Mac & Fizzell
1201 Walnut Street
Kansas City, MO 64106
Ph. Number: 816 491-3124

THE UNDERSIGNED PARTY enters into this Consent Decree in the Matter of United States v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR VERMONT GAS SYSTEMS, INC.

(Name of entity)

9/30/99

Date

Signature: *A. Donald Gilbert Jr.*

Name (print): A. DONALD GILBERT JR.

Title: SR. VICE PRESIDENT

Address: 85 SWIFT STREET

30 BURLINGTON VT

05403

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

Name (print): Peter D. Van Oort, Esq.

Title: Attorney

Address: Downs Rachlin & Martin, PLLC

80 Linden St., P.O. Box 9

Brattleboro, VT 05302

Ph. Number: 802-258-3070

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States et al. v. Green Mountain Power Corporation, et al., relating to the Pine Street Canal Superfund Site.

FOR Vermont Railway
(Name of entity)

8-18-99
Date

Signature: [Signature]
Name (print): David Walker
Title: President
Address: 1 Railway Lane
Burlington VT
05401

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

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____