

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

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U.S. DISTRICT COURT
BURLINGTON, VT

UNITED STATES OF AMERICA and
STATE OF VERMONT,

Plaintiffs,

v.

TANSITOR ELECTRONICS, INC.
and SIEMENS COMMUNICATION
SYSTEMS, INC.,

Defendants.

CIVIL ACTION NO.

2:99-CV-14

CONSENT DECREE

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SYSTEMS, INC.,)	
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Defendants.)	

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), 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 by EPA and the Department of Justice for response actions at the Tansitor Electronics, Inc. Superfund Site ("Site") in Bennington, Vermont, together with accrued interest; and (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").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Vermont (the "State") on February 10, 1997 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 (the "State") has also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and under 10 V.S.A. § 6615.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal natural resource trustees on May 24, 1996 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

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

constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 4, 1989, 54 Fed. Reg. 41021.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, the Settling Defendants under EPA oversight commenced on September 12, 1990, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. The Settling Defendants completed and EPA issued a Remedial Investigation ("RI") Report on June 10, 1994, and the Settling Defendants completed and EPA issued a Feasibility Study ("FS") Report on February 13, 1995.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on February 27, 1995, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. 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, 1995, on 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.

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

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

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

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

II. JURISDICTION

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

III. PARTIES BOUND

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

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

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

IV. DEFINITIONS

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:

"Active Remediation" shall mean any remedial action using engineering controls, equipment, processes, or mechanisms to intercept, pump, treat, contain, physically control, or restore contaminated groundwater or any remedial action using engineering

controls, equipment, processes, or mechanisms to remove, treat, contain, or restore contaminated soil. Active Remediation shall not include groundwater monitoring, sampling, or installation of groundwater monitoring wells.

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

"Concrete Pad Area Plume" shall mean the Contaminated Groundwater moving through the shallow soils at the Site, from beneath a concrete pad located north of the main facility building to the south. At the time of issuance of the ROD, this plume was estimated to be approximately 50 feet wide by 200 feet long and extending from the surface to between 10-20 feet below the surface, as depicted in Figure 9 in the ROD.

"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.

"Contaminated Groundwater" shall mean groundwater at or from the Site that is contaminated above Maximum Contaminant Limits ("MCLs"), non-zero Maximum Contaminant Limit Goals ("MCLGs") or Vermont Primary Groundwater Quality Standards, whichever is most stringent. In the absence of MCLs, non-zero MCLGs, or Vermont Primary Groundwater Quality Standards, "Contaminated Groundwater" shall mean groundwater that has contaminant concentrations above

levels that are protective of human health, as determined by EPA.

"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.

"Disposal Area Plume" shall mean the Contaminated Groundwater moving through the shallow soils at the Site, from an area designated in the ROD as the Disposal Area, to the Fire Pond. At the time of issuance of the ROD, this plume was estimated to be approximately 200 feet wide by 250 feet long and extending from the surface to between 20-60 feet below the surface, as depicted in Figure 8 in the ROD.

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

"Future Response Costs" shall mean all costs, direct and indirect, other than Oversight Costs, that the United States or the State incur including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and costs paid by EPA to the State pursuant to a cooperative agreement: (i) in developing any plans, reports or other items which Settling Defendants fail to submit under this Consent Decree; (ii) in modifying any plans, reports, and other items pursuant to Section

XI (EPA Approval of Plans and Other Submissions), except for costs related to the review of any such submissions; (iii) in implementing the Work under Paragraph 11 of this Consent Decree; (iv) in enforcing the terms of this Consent Decree; (v) in connection with Sections IX (Access and Institutional Controls) (including, but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation) and XV (Emergency Response); and (vi) in connection with Section VII (Remedy Review). Future Response Costs shall also include all Interim Response Costs and all Interest accrued on the \$300,000 Past Response Cost payment pursuant to 42 U.S.C. § 9607(a) during the period from January 1, 1998 to the date of entry of this Consent Decree.

"Groundwater Monitoring Plan" shall mean any plan, report or other deliverable that the Settling Defendants are required to submit to EPA and VT DEC pursuant to Section V.B. of the SOW.

"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.

"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).

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between January 1, 1998 and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree but paid after that date.

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

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

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

"Oversight Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and/or the State incur on and after the effective date of the Consent Decree in reviewing plans, reports and other items

pursuant to this Consent Decree, verifying the Work, or otherwise overseeing the Work or this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and costs paid by EPA to the State pursuant to a cooperative agreement.

"Owner Settling Defendant" shall mean Tansitor Electronics, Inc.

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

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

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, not previously reimbursed, that the United States paid at or in connection with the Site through December 31, 1997, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through December 31, 1997.

"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, 1995, by

the Regional Administrator, EPA Region I, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

"Remedial Action" shall mean the recording of access easements and deed restrictions pursuant to Section IX (Access and Institutional Controls) of this Consent Decree.

"Remedial Contingency Reports" shall mean any plan, report or other deliverable that the Settling Defendants are required to submit to EPA and VT DEC pursuant to Section V.C. of the SOW.

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

"Settling Defendants" shall mean those Parties identified in Appendix D.

"Site" shall mean the Tansitor Electronics, Inc. Superfund Site, encompassing approximately 44 acres, located on Route 9 in Bennington, Bennington County, Vermont and depicted generally on the map attached as Appendix C.

"State" shall mean the State of Vermont.

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

"Tansitor Well" shall mean the water supply well currently existing at the Site as shown on Figure 13 of the ROD.

"Technical Impracticability Zone" or "TI Zone" shall mean the following horizontal and vertical area at the Site: (i) the

horizontal area bounded by the Site water reservoir (northwest corner), MW-107 (northeast corner), northern right-of-way of Route 9 by the Eastern Leachfield (southeast corner), and the northern right-of-way of Route 9 just beyond MW-109 (southwest corner), and which is depicted in Figure 13 in the ROD (this horizontal area is identical to the horizontal Class IV Groundwater Area established by the Vermont Groundwater Reclassification Order); and (ii) the vertical area extending below the horizontal area described above, consisting of all of the overburden soils, which extend approximately 180 feet below the ground surface to the bedrock; this vertical area does not include the bedrock.

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

"Vermont Groundwater Reclassification Order" shall mean the VT DEC Order, dated November 23, 1993, which, pursuant to State law, reclassified groundwater beneath a 9.6 acre area of the Site, where Contaminated Groundwater was detected, from Class III Groundwater (defined under State law as suitable as a source of water for individual domestic drinking water supply, irrigation, agricultural use, and general industrial and commercial use) to Class IV Groundwater (defined under State law as not suitable as a source of potable water but suitable for some agricultural, industrial and commercial use). The Vermont Groundwater Reclassification Order is set forth as Appendix C to the ROD.

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under 10 V.S.A. § 6602(16).

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree and SOW, except those required by 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 the Settling Defendants, to reimburse Past Response Costs, Oversight Costs, and Future Response Costs, and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW,

and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States and the State for Past Response Costs, Oversight Costs, and Future Response Costs as provided in this Consent Decree.

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

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws 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 As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for

any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

9. The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work, but shall be entitled to such relief only if they have filed timely and complete permit applications. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

10. Notice to Successors-in-Title

a. The Owner Settling Defendant, within fifteen (15) days after the entry of this Consent Decree, shall submit to EPA for review and approval a notice to be filed with the Town Clerk's Office for the Town of Bennington, Bennington County, State of Vermont, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on September 29, 1995, and

that a Consent Decree requiring the implementation of the remedy by potentially responsible parties exists. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Such notice shall be filed within ten (10) days of EPA's approval of the notice. The Owner Settling Defendant shall provide EPA with a certified copy of the recorded notice within ten (10) days of recording such notice.

b. At least thirty (30) days prior to the conveyance of any interest in property located within the Site, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant shall give the grantee written notice of this Consent Decree, 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 any Institutional Controls in the form of deed restrictions that have been filed with respect to the Site pursuant to Section IX (Access and Institutional Controls). At least thirty (30) days prior to such conveyance, the Owner Settling Defendant shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree and Access easements or Institutional Controls in the form

of deed restrictions was given to the grantee. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including its obligations to provide or secure access and Institutional Controls, as well as abide by such Institutional Controls, pursuant to Section IX (Access and Institutional Controls), shall continue to be met by the Owner Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant to comply with all provisions of this Consent Decree. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

11. The Settling Defendants shall perform the Work, as required by this Consent Decree and the SOW, including, but not limited to, the filing of access easements and deed restrictions pursuant to Section IX (Access and Institutional Controls), performance of groundwater monitoring, and preparation of Remedial Contingency Reports if certain contingencies occur. Upon approval of all plans, reports and other deliverables submitted to EPA pursuant to this Decree or the SOW, such plans, reports and other deliverables shall be incorporated into and shall be enforceable under this Consent Decree.

12. Modification of the Consent Decree, the SOW or Related Deliverables.

a. If EPA determines that modification to the Work is necessary 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 Consent Decree, the SOW and/or related deliverables thereunder. 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.

b. For the purposes of this Paragraph 12 and Paragraphs 23, 43 and 44 only, the "scope of the remedy selected in the ROD" is: (1) to implement Institutional Controls that prohibit the use of groundwater drawn from the Technical Impracticability Zone, prohibit the use of Contaminated Groundwater, prohibit uses of the groundwater at the Site that may adversely affect the Disposal Area Plume and/or the Concrete Pad Area Plume, restrict use of the TI Zone to industrial and commercial operations unless other uses of the TI Zone are approved by EPA, and require EPA approval of any construction activities that may disturb the soil within the TI Zone; (2) to monitor groundwater in order to ensure that groundwater contaminants do not migrate from the Technical Impracticability Zone to areas outside of the Technical Impracticability Zone; and (3) to perform further studies in the event that the Disposal Area Plume or the Concrete Pad Plume are

expanding beyond the horizontal or vertical extent of those plumes at the time of the issuance of the ROD or to areas outside of the Technical Impracticability Zone. The "scope of the remedy selected in the ROD" does not include Active Remediation at the Site.

c. If Settling 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 63 (record review). The SOW shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the SOW in accordance with this Paragraph.

e. 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.

f. Settling Defendants acknowledge and agree that nothing in this Consent Decree or the SOW constitutes a warranty or representation of any kind by Plaintiffs that compliance with the Consent Decree or the SOW will prevent migration of Contaminated Groundwater at or from the Site.

VII. REMEDY REVIEW

13. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to

permit EPA to conduct reviews of whether the performance of the Work is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

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

15. 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.

16. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Defendants shall undertake such further response actions, other than Active Remediation, to the extent that the reopener conditions in Paragraph 78 or Paragraph 79 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 78 or Paragraph 79 of Section

XXI (Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's determination that the performance of the Work is not protective of human health or the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the performance of the Work is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 63 (record review).

17. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 16, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

18. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087)), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this

Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW and the NCP. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or

EPA-equivalent QA/QC program. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

19. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Defendants shall notify EPA and the State not less than twenty-eight (28) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. 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 Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Settling Defendants' implementation of the Work.

20. Settling Defendants shall submit to EPA and the State three copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA or the State, respectively, agree otherwise.

21. 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

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

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States or the State;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. Conducting Periodic Reviews of the Work including, but not limited to, reviews required by CERCLA and the NCP;

vii. Implementing the Work pursuant to the conditions set forth in Paragraph 84 of this Consent Decree;

viii. 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);

ix. Assessing Settling Defendants' compliance with this Consent Decree; and

x. Determining whether the Site is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, pursuant to Paragraph 23 of this Consent Decree or the Institutional Controls established pursuant to this Consent Decree.

b. In regard to any property owned or controlled by the Owner Settling Defendant for which EPA determines that access is needed to implement this Consent Decree, the SOW, or the remedy selected in the ROD including, but not limited to, the Site, the Owner Settling Defendant shall record in the Town Clerk's Office for the Town of Bennington, Bennington County, Vermont, access easements that grant to the State and its representatives a right of access, running with the land, for the purpose of conducting

any activity related to this Consent Decree including, but not limited to, those activities listed in Subparagraph a. of this Paragraph. The Owner Settling Defendant shall, within forty-five (45) days of the date of entry of this Consent Decree, submit to EPA and the State for review and approval by EPA with respect to such property, a draft access easement in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the State of Vermont and that is free and clear of all prior liens and encumbrances (except as approved by EPA) as well as a current title commitment or report. Within fifteen (15) days of EPA's approval of such easement, the Owner Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the easement with the Town Clerk's Office for the Town of Bennington, Bennington County. Within thirty (30) days of filing the easement, the Owner Settling Defendant shall provide EPA and the State with a title insurance policy or other final title evidence, and a certified copy of the original recorded easement showing the clerk's recording stamps.

c. If EPA determines, with respect to any property that is owned or controlled by persons other than a Settling Defendant, that access to such property is required to implement this Consent Decree, the SOW, or the remedy selected in the ROD, Settling Defendants shall use best efforts to secure from such

persons access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Subparagraph a. of this Paragraph.

d. If EPA determines, with respect to any property that is owned or controlled by persons other than a Settling Defendant, that access to such property is required to implement this Consent Decree, the SOW, or the remedy selected in the ROD, Settling Defendants shall, at EPA's request, use best efforts to secure from such persons the recordation in the Town Clerk's Office for the Town of Bennington, Bennington County, Vermont, of access easements that grant to one or more of the following persons or entities, as directed by EPA:

- i. the United States, on behalf of EPA, and its representatives,
- ii. the State and its representatives,
- iii. the other Settling Defendants and their representatives, or
- iv. other appropriate grantees,

a right of access to the property, running with the land, for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, those activities listed in Subparagraph a. of this Paragraph. If such access easements are

requested, Settling Defendants shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

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

23. a. Commencing upon the date of the EPA Regional Administrator's signature on this Consent Decree, the Owner Settling Defendant agrees not to use the Site in violation of any of the following restrictions:

- i. No water supply well shall be installed anywhere within the TI Zone.
- ii. No water supply well shall be installed anywhere outside of the TI Zone within the Site, without prior EPA approval and in accordance with State and Federal law. Any proposal submitted to EPA for approval to install a water supply well outside of the TI Zone within the Site shall include a demonstration that the installation and use of such a well would not cause expansion of the Disposal Area Plume or the Concrete Pad Plume beyond the horizontal or vertical extent of these two plumes at the time of issuance of the ROD. This demonstration shall include, at a minimum, pump tests and laboratory analysis for volatile organic compounds ("VOCs"). This demonstration shall also include a plan to perform groundwater monitoring and reporting to assess the effect of the well on contaminant distribution.
- iii. The Tansitor Well shall not be used to extract more than 20,000 gallons of water per day, without prior EPA approval. Any proposal submitted to EPA for approval to extract more than 20,000 gallons of water per day from such well shall demonstrate that such use would not induce expansion of the Disposal Area Plume or the Concrete Pad Plume beyond the horizontal or vertical extent of these two plumes at the time of issuance of the ROD.
- iv. The TI Zone shall be used solely for industrial and commercial purposes, unless other uses of the TI Zone are approved by EPA.
- v. No excavation or construction activities that would disturb the soil within the TI Zone shall be undertaken without EPA approval. All requests for such EPA approval shall include a plan to perform monitoring in order to assess the health and safety

of workers and others present at the TI Zone during excavation or construction.

- vi. All of the above-listed restrictions shall remain in effect as long as Contaminated Groundwater is present at the Site, as determined by EPA.

In addition to complying with the restrictions listed above, the Owner Settling Defendant, with respect to any property that it owns or controls, shall also comply with any additional land and/or water use restrictions that EPA determines are needed to protect the public health or the environment, as long as such additional restrictions are consistent with the "the scope of the remedy selected in the ROD," as that term is defined in Paragraph 12.b of this Consent Decree.

b. In regard to any property owned or controlled by an Owner Settling Defendant for which EPA determines that Institutional Controls are needed to protect the public health or the environment at the Site, the Owner Settling Defendant shall 1) grant to the State and its representatives and 2) record in the Town Clerk's Office for the Town of Bennington, Bennington County, Vermont, Institutional Controls in the form of deed restrictions, running with the land, that impose the obligations and restrictions established by Subparagraph a. of this Paragraph. The Owner Settling Defendant shall, within forty-five (45) days of the date of entry of this Consent Decree, submit to EPA and the State, for review and approval by EPA, with respect to such property a draft deed restriction, in substantially the

form attached hereto as Appendix E, that is enforceable under the laws of the State of Vermont and that is free and clear of all prior liens and encumbrances (except as approved by EPA) as well as a current title report or commitment. Within fifteen (15) days of EPA's approval of such deed restriction, the Owner Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the deed restriction with the Town Clerk's Office for the Town of Bennington, Bennington County. Within thirty (30) days of filing the deed restriction, the Owner Settling Defendant shall provide EPA and the State with a title insurance policy or other final title evidence, and a certified copy of the original recorded deed restriction showing the clerk's recording stamps. If EPA notifies the Owner Settling Defendant that additional deed restrictions are needed to protect the public health or the environment with respect to any property owned or controlled by an Owner Settling Defendant, the Owner Settling Defendant shall file such deed restrictions pursuant to the procedures outlined in this Subparagraph, as long as such restrictions are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 12.b of this Consent Decree, except that the time requirements shall commence with the date of receipt of the written notice, as opposed to the date of entry of this Consent Decree.

c. If EPA determines, with respect to any property that is owned or controlled by persons other than a Settling Defendant, that Institutional Controls are needed to protect the public health or the environment, Settling Defendants shall use best efforts to secure a commitment by such persons to abide by the restrictions established by Subparagraph a. of this Paragraph, as well as any other restrictions that are needed to protect the public health or the environment, as long as such restrictions are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 12.b of this Consent Decree.

d. If EPA determines, with respect to any property that is owned or controlled by persons other than a Settling Defendant, that Institutional Controls are needed to protect the public health or the environment, Settling Defendants shall, at EPA's request, use best efforts to secure from such persons (1) the granting to one or more of the following persons or entities, as directed by EPA:

- a. the United States, on behalf of EPA, and its representatives,
- b. the State and its representatives,
- c. the other Settling Defendants and their representatives, or
- d. other appropriate grantees,

and (2) recordation in the Town Clerk's Office for the Town of Bennington, Bennington County, Vermont, of Institutional Controls

in the form of deed restrictions, running with the land, that impose the obligations and restrictions established by Subparagraph a. of this Paragraph, as well as any other restrictions that are needed to protect the public health or the environment, as long as such restrictions are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 12.b of this Consent Decree. If such deed restrictions are requested, Settling Defendants shall proceed in accordance with the requirements of Subparagraph b. of this Paragraph.

e. For purposes of Subparagraphs c. and d. of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of Institutional Controls in the form of commitments or deed restrictions. If any commitments required under Subparagraph c. are not obtained within 45 days of the date of lodging of this Consent Decree, or any deed restrictions requested by EPA under Subparagraph d. of this Paragraph are not submitted to EPA in draft form within forty-five (45) days of EPA's request for such deed restrictions, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps (including requests, offers and responses thereto) that Settling Defendants have taken to attempt to obtain such commitments or deed restrictions. The United States may, as it deems appropriate, assist Settling Defendants in obtaining such commitments or deed

restrictions. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs and Payment for Natural Resource Damages), for all costs incurred by the United States in obtaining such commitments or deed restrictions, including, but not limited to, attorneys fees and the amount of monetary consideration paid.

24. Within one year of the date of entry of this Consent Decree, and each year thereafter, the Owner Settling Defendant shall submit to EPA and the State a Certified Submission, pursuant to Paragraph 37, consisting of a report that provides sufficient information for EPA to determine whether the land and water use restrictions set forth at Paragraph 23.a have been complied with during the prior year.

25. If EPA determines, after reasonable opportunity for review and comment by the State, that land and/or water use restrictions in the form of state or local laws, regulations, ordinances or other governmental action are needed to protect the public health or the environment in connection with the Site, Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

26. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of its access authorities and rights, including enforcement authorities related thereto,

under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

27. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendants shall within twenty-four (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 Settling Defendants also shall orally notify the State Project Coordinator of such event. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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

29. Settling Defendants shall submit three copies of all plans, reports, and data required by the SOW or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit three copies of all such plans, reports and data to the State.

30. All reports and other documents submitted by Settling Defendants to EPA which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

31. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA; after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within thirty 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.

32. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 31(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section 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 31(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

33. a. Upon receipt of a notice of disapproval pursuant to Paragraph 31(d), Settling Defendants shall, within thirty (30) 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. In determining whether to specify a period longer than thirty (30) days for resubmitting a deliverable, EPA will take into account the time required for preparation of the original deliverable, the extent of revisions required, and the necessity of performing any field work. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the thirty (30) day period or otherwise specified period but shall not be payable unless the resubmission is

disapproved or modified due to a material defect as provided in Paragraphs 34 and 35.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 31(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

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

35. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute

Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

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

37. Certified Submissions. Each plan, report, or other item that may be submitted by Settling Defendants as a Certified Submission as specified in Section VII.A of the SOW, shall be certified by the Settling Defendants as provided below. Upon submittal to EPA and the State, the Settling Defendants shall proceed with the next scheduled activity consistent with the Certified Submission without further notification or approval by EPA. Each such Certified Submission shall include the following certification signed by the Settling Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and

complete. I further certify that the contents of this submission comply with the requirements of the Consent Decree and the SOW. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

EPA, at its discretion, may review, approve, modify, or disapprove any Certified Submission in accordance with the review process described in Paragraphs 31 to 36 above. In such event, all of the provisions of Paragraphs 31 to 36 above shall apply to such deliverable.

XII. PROJECT COORDINATORS

38. Within twenty (20) days of lodging this Consent Decree, Settling Defendants, the State and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling 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.

39. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and Federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator 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.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

40. Within thirty (30) days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$390,000 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;

(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 Settling Defendants; or

(e) A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

41. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 40(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 40(d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 40 of this Consent Decree.

Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

42. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling 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

43. Completion of the Remedial Action

a. Within ninety (90) days after Settling Defendants conclude that the Remedial Action has been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, the Settling Defendants' Project Coordinator shall state that the Remedial Action has been

completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

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

If, after 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, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action. Provided, however, that EPA may only require Settling 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," as that term is defined in Paragraph 12.b. 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 Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other

Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the 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, 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 Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

44. Completion of the Work

a. Within ninety (90) days after Settling Defendants conclude that all phases of the Work (including all groundwater monitoring) have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA and the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling

Defendants shall submit a written report by Settling Defendants' Project Coordinator (and, in the event that the Settling Defendants have submitted any Remedial Contingency Reports since the effective date of the Consent Decree, by a registered professional engineer) stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

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

If, after 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 Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling 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," as that term is defined in Paragraph 12.b. 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 Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

45. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 46, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project

Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA [Emergency Response Unit], Region I. The Settling Defendants shall also notify the States' Project Coordinator. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA or the State takes such action instead, Settling 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 and Payment for Natural Resource Damages).

46. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State, (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiffs).

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

47. Within thirty (30) days of the effective date of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$300,000 in reimbursement of Past Response Costs, 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 #01-C3, and DOJ case number 90-11-3-737A. 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).

48. Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Oversight Costs incurred by the United States in excess of \$40,000 and all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis, the United States will send Settling Defendants a bill requiring payment that includes a Region I standard cost summary, which is a line-item summary of costs in dollars by

category of costs (including, but not limited to, payroll, travel, indirect costs, and contracts) incurred by EPA (or reimbursed by EPA to the State pursuant to a cooperative agreement), DOJ, and their contractors. Settling Defendants shall make all payments within thirty (30) days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 50. The Settling Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID #01-C3, the DOJ case number 90-11-3-737A, and the name and address of the party making payment. The Settling Defendants shall send the check(s) to EPA Region I, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251 and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions).

49. Settling Defendants shall reimburse the State for all Oversight Costs incurred by the State not reimbursed or to be reimbursed by the United States and not inconsistent with the National Contingency Plan, in excess of \$10,000, as follows: (a) Settling Defendants shall reimburse the State for all Oversight Costs after an initial credit of \$1,000 per year, the first such year to begin on the effective date of the Consent Decree; (b) any credit amounts not utilized in any year shall be carried forward into future years, except that such accumulated credit

shall not exceed \$10,000; and (c) after the State has incurred a total of \$10,000 in unreimbursed Oversight Costs, Settling Defendants shall reimburse the State for all remaining Oversight Costs. Settling Defendants shall also reimburse the State for all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis, the State will send Settling Defendants a bill requiring payment that includes a State standard cost summary, which is a line-item summary of costs in dollars by category of costs (including, but not limited to, payroll, travel, indirect costs, and contracts) incurred by the State or its contractors. Settling Defendants shall make all payments within thirty (30) days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 50. The Settling Defendants shall make all payments to the State required by this Paragraph in the form of a certified check or checks made payable to State Treasurer and shall forward the certified check(s) to Secretary, Vermont Agency of Natural Resources, 103 South Main Street, Waterbury, VT 05671.

50. Settling Defendants may contest payment of any Oversight Costs or Future Response Costs under Paragraphs 48 or 49 if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States (if

the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Oversight Costs or Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the thirty (30) day period pay all uncontested Oversight Costs or Future Response Costs to the United States or the State in the manner described in Paragraphs 48 and 49. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Vermont and remit to that escrow account funds equivalent to the amount of the contested Oversight Costs or Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Oversight Costs or Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States or the State prevails

in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States or the State, if State costs are disputed, in the manner described in Paragraphs 48 and 49. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the State, if State costs are disputed in the manner described in Paragraph 48 and 49; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States and the State for their Oversight Costs and Future Response Costs.

51. In the event that the payment required by Paragraph 47 is not made within thirty (30) days of the effective date of this Consent Decree or the payments required by Paragraphs 48 and 49 are not made within thirty (30) days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue thirty (30) days after the effective date of this Consent Decree. The Interest on Oversight Costs and Future Response Costs shall begin to accrue

on the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraphs 48 and 49.

52. Payments for Natural Resource Damages. The Settling Defendants shall, within thirty (30) days after entry of this Consent Decree, pay to the United States \$21,000, plus Interest, for Natural Resource Damages. The payment shall be made in the form of a certified check made payable to "U.S. Department of the Interior" and referencing Account Number 14X5198, DOJ Number 90-11-3-737A, the USAO number, and the name of the Site. The Settling Defendants shall forward the certified check by certified mail, return receipt requested to:

Chief, Division of Finance
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
Arlington, VA 22203

and shall reference that the payment is for Natural Resource Damages for resources under the trusteeship of DOI with respect to the Tansitor Site. Interest on the payment of Natural Resource Damages shall begin to accrue on the date of lodging of this Consent Decree and shall continue to accrue until the date

of payment. Copies of the check paid pursuant to this subparagraph and any accompanying transmittal letter shall be sent to the United States and DOI as provided in Section XXVI (Notices and Submissions).

XVII. INDEMNIFICATION AND INSURANCE

53. 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 EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States and the State all costs they incur including, but not limited to, the cost of attorney time 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 Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of 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.

b. The United States and the State shall give Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 53.a., and shall consult with Settling Defendants prior to settling such claim.

54. 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, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States and the State with respect to any

and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

55. No later than fifteen (15) days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain comprehensive general liability insurance with limits of two million dollars, combined single limit, and automobile liability insurance with limits of two million dollars, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA 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, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

56. "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 or may delay or prevent 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.

57. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants

shall notify 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 & Restoration, EPA Region I, and the State's Project Coordinator, within seventy-two (72) hours of when Settling Defendants first knew that the event might cause a delay. Within five days thereafter, Settling Defendants shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event 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.

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

59. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days

after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 56 and 57, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

60. 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 or between the State 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 62 to 65. The State may participate in such dispute resolution proceedings to the extent specified in Paragraphs 62 to 65. Disputes exclusively between the State and the Settling Defendants are governed by Paragraph 66. 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.

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

62. 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 63 or Paragraph 64.

b. Within fourteen days after receipt of Settling Defendants' Statement of Position, EPA, after reasonable opportunity for review and comment by the State, will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. The State, after reasonable opportunity for review and comment by EPA, may also serve a Statement of Position within the fourteen-day time limit set forth above in this Paragraph. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraphs 63 or 64. Within ten (10) days after receipt of EPA's and/or the State'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 Paragraphs 63 or 64, 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 63 and 64.

63. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record

under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

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

b. The Director of the Office of Site Remediation & Restoration, EPA Region I, will issue, after reasonable opportunity for review and comment by the State, a final administrative decision resolving the dispute based on the administrative record described in Paragraph 63.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 63.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 63.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 ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion within thirty (30) days of such 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 & 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 63.a.

64. 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 62, the Director of

the Office of Site Remediation & Restoration, EPA Region I, after reasonable opportunity for review and comment by the State, will issue a final decision resolving the dispute. The decision of the Director of the Office of Site Remediation & Restoration 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 thirty (30) days of such motion.

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

65. 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

68. 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).

66. Disputes solely between the State and Settling Defendants. Disputes arising under the Consent Decree between the State and Settling Defendants that relate to Oversight Costs and Future Response Costs owed to 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 62 to 65, except that each reference to EPA shall read as a reference to VT DEC, 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 VT DEC, each reference to the United States shall be read as a reference to the State, and each reference to the State shall be read as a reference to the United States.

XX. STIPULATED PENALTIES

67.a. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 68 for failure to comply with the requirements of this Consent Decree, unless

excused under Section XVIII (Force Majeure). When the United States enforces stipulated penalties, the United States shall receive 90% of the stipulated penalties received and the State shall receive 10% of the stipulated penalties received. When the State enforces stipulated penalties, the State shall receive 90% of the stipulated penalties received and the United States shall receive 10% of the stipulated penalties received. 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. "Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

b. 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 that there was a failure to comply, then, subject to Paragraph 67.c, the State may pursue stipulated

penalties in the same manner as the United States is authorized to pursue stipulated penalties under this Consent Decree.

c. The State may pursue stipulated penalties after expiration of the forty-five (45)-day period only if:

(i) the State has provided written notice to the United States after the expiration of the forty-five (45)-day period that identifies the failure to comply that would be the basis for stipulated penalties and the party or parties from whom penalties would be sought;

(ii) the State has, after providing the written notice, consulted with the United States regarding any reasons EPA may have for not pursuing the stipulated penalties, and the State has, after completion of the consultation, provided further written notice to the United States of a date, not less than thirty (30) days from the date of such notice, when the State intends to seek stipulated penalties; and

(iii) EPA has not issued the Settling Defendants a written demand for payment of the penalties.

d. Nothing herein shall preclude the United States from pursuing stipulated penalties except where the State has already pursued stipulated penalties from the Settling Defendants in accordance with subparagraphs 67.b and 67.c.

68. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements of the Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,500	1st through 14th day
\$ 2,500	15th through 30th day
\$ 5,000	31st day and beyond

69. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 84 of Section XXI (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable to the United States for a stipulated penalty in the amount of \$100,000.

70. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Office of Site Remediation & Restoration, EPA Region I, under Paragraph 63.b. or 64.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by

this Court of any dispute under Section 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.

71. Following EPA's determination, after a reasonable opportunity for review and comment by the State, that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA or the State (as provided in Paragraph 67) may give Settling Defendants written notification of the same and describe the noncompliance. EPA and/or the State may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA or the State has notified the Settling Defendants of a violation.

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

shall be mailed to EPA Region I, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #01-C3, the DOJ Case Number 90-11-3-737A, and the name and address of the party making payment. All payments to the State under this Section shall be made payable to State Treasurer and shall be mailed to Secretary, Vermont Agency of Natural Resources, 103 South Main Street, Waterbury, VT 05671. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the Parties as provided in Section XXVI (Notices and Submissions).

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

74. Penalties shall continue to accrue as provided in Paragraph 70 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States or the State prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the

Court to be owed within sixty (60) days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

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

75. a. If Settling Defendants fail to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 72.

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(1) of CERCLA. Provided, however, that the United

States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is assessed hereunder, except in the case of a willful violation of the Consent Decree.

76. Notwithstanding any other provisions of this Section, where the United States has pursued stipulated penalties, or, as to the United States' share if the State has pursued stipulated penalties, the United States may, in its unreviewable discretion, decide not to seek such stipulated penalties or to waive any portion of such stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

77. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 78, 79, 83 and 86 of this Section, the United States, on behalf of EPA, DOI and NOAA, covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 80, 81, and 83 of this Section, the State covenants not to sue or to take administrative

action against the Settling Defendants pursuant to Section 107(a) of CERCLA, 10 V.S.A. § 6615, relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA and DOI of the payments required by Paragraphs 47 and 52 of Section XVI (Reimbursement of Response Costs and Payment for Natural Resource Damages). 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 43.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.

78. United States' Pre-certification Reservations.

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

- (i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received,
in whole or in part,

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

79. United States' Post-certification Reservations.

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

(i) conditions at the Site, previously unknown to EPA, are discovered, or

(ii) information, previously unknown to EPA, is received,
in whole or in part,

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

80. State's Pre-certification Reservations.

Notwithstanding any other provisions of this Consent Decree, the State on behalf of the VT DEC, reserves, and this Consent Decree is without prejudice to, any right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to 10 V.S.A. § 6615, seeking to compel all or any of the Settling Defendants (1) to perform other response actions at the Site, or (2) to reimburse the State for response costs for other response actions at the Site, to the extent that EPA has determined that such response actions under (1) and (2) 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:

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

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

and the VT DEC Commissioner, or his or her delegate determines, pursuant to Title 10 V.S.A. Chapters 159, 201 & 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.

81. State's Post-certification Reservations.

Notwithstanding any other provision of this Consent Decree, the State, on behalf of VT DEC, reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to 10 V.S.A. § 6615, seeking to compel all or any of the Settling Defendants (1) to perform other response actions at the Site, or (2) to reimburse the State for response costs for other response actions at the Site, to the extent that EPA has determined that such response actions under (1) and (2) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, subsequent to Certification of Completion of Remedial Action:

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

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

and the VT DEC Commissioner, or his or her delegate, determines, pursuant to Title 10 V.S.A. Chapters 159, 201 & 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.

82. For purposes of Paragraphs 78 and 80, the information and the conditions known to EPA, under Paragraph 78, and the information and the conditions known to the State, under Paragraph 80, shall include only that information and those conditions known to EPA, or the State as applicable, 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, as well as that information and those conditions known to EPA, or the State as applicable, as set forth in the Class IV Groundwater Area Sample Collection Summary Reports sent to EPA and/or the State through January 28, 1998. For purposes of Paragraph 79 and 81, the information and the conditions known to EPA, under Paragraph 79, and the information and conditions known to the State, under Paragraph 81, shall include only that information and those conditions known to EPA, or the State as applicable, 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 by EPA, or the State as applicable, pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

83. General Reservations of Rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 77. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree (including, but not limited to, Section VI (Performance of the Work by Settling Defendants) and Section IX (Access and Institutional Controls));

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

(3) liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;

(4) criminal liability;

(5) liability for violations of federal or state law;

(6) liability for additional response actions that EPA determines are necessary to protect human health or the environment based on its review of the information set forth in any Remedial Contingency Reports submitted pursuant to the SOW (but that cannot be required pursuant to Paragraph 12 [Modification of the Consent Decree, the SOW, or Related Deliverables]), Section VII (Remedy Review) or Section XIV (Certification of Completion); and

(7) liability for any Active Remediation or additional Institutional Controls that EPA determines is necessary to protect human health or the environment at the Site.

In addition, the State reserves all rights against Settling Defendants with respect to liability for damages for injury to, destruction of, or loss of Natural Resources, including the reasonable costs of assessing any injury, destruction or loss.

84. Work Takeover. In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 63, to dispute EPA's determination that takeover of the Work is warranted under this

Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs).

85. 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.

86. Reservations Concerning Natural Resource Damages.

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

XXII. COVENANTS BY SETTLING DEFENDANTS

87. Covenant Not to Sue. Subject to the reservations in Paragraph 88, 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, and Past and Future Response Costs as defined herein, or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

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

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

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

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

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

89. 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

90. 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.

91. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are Past Response Costs, Oversight Costs, Future Response Costs and the Work.

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

93. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States and the State within ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

94. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs or Natural Resource Damages, or other appropriate relief relating to the Site, Settling Defendants shall waive and shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph

affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

95. The status of the Site with respect to inclusion on or removal from the National Priorities List, which is set forth at 40 C.F.R. Part 300, shall in no way affect or diminish the rights and authorities of the United States or the State under this Decree, and the Settling Defendants shall not assert a defense based on such status in any action related to the enforcement of this Decree.

XXIV. ACCESS TO INFORMATION

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

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

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted

by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

98. 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

99. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 44.b of Section XIV (Certification of Completion), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 44.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.

100. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to EPA or the State. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged. Settling Defendants shall retain any documents with respect to which they have asserted a claim of privilege until such time as any disputes with respect to the privilege assertion have been resolved.

101. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVI. NOTICES AND SUBMISSIONS

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

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-3-737A

and

Director, Office of Site Remediation & Restoration
United States Environmental Protection Agency
Region I
J.F. Kennedy Federal Building, Mailcode H10
Boston, MA 02203-2211

As to EPA:

Terrence Connelly
EPA Project Coordinator
United States Environmental Protection Agency
Region I
J.F. Kennedy Federal Building, Mailcode HBT
Boston, MA 02203-2211

As to the State:

Michael Smith
State Project Coordinator
Site Management Section
103 South Main Street, West Building
Waterbury, VT 05671-0404

Mary K. McCabe
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

As to the Settling Defendants:

William R. Norman
Settling Defendants' Project Coordinator
GZA GeoEnvironmental, Inc.
320 Needham Street
Newton Upper Falls, MA 02164

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

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

"Appendix D" is the complete list of the Settling Defendants.

"Appendix E" is the draft access easement/deed restriction.

XXX. COMMUNITY RELATIONS

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

XXXI. MODIFICATION

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

108. Except as provided in Paragraph 12 ("Modification of the Consent Decree, the SOW or Related Deliverables"), no material modifications shall be made to the Consent Decree or the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the

Consent Decree or 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 Settling Defendants. Non-material modifications shall be effective upon filing with the Court.

109. 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

110. 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. The State may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates State law. The United States reserves the right to challenge in court the State withdrawal from the Consent Decree, including the right to argue that the requirements of State law have been waived, pre-empted or otherwise rendered

inapplicable by federal law. The State reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In addition, in the event of the United States' withdrawal from this Consent Decree, the State reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XXXIII. SIGNATORIES/SERVICE

112. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for Environment and Natural Resources 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.

113. 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.

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

115. Upon entry, this Consent Decree shall be a final order pursuant to Fed. R. Civ. P. 54.

SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Tansitor Electronics, Inc. and Siemens Communication Systems, Inc., relating to the Tansitor Electronics, Inc. Superfund Site.

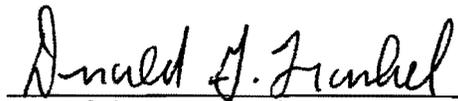
FOR THE UNITED STATES OF AMERICA

Date: 12-27-98



Joel M. Gross
Section Chief
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: 1/4/99



Donald G. Frankel
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Suite 616
One Gateway Center
Newton Corner, MA 02158
(617) 450-0442

Charles R. Tetzlaff
United States Attorney
District of Vermont

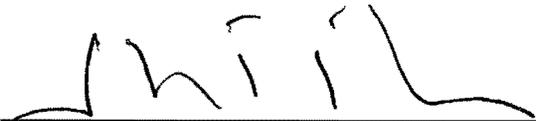
Date: 1/11/99



Joseph R. Perella
Assistant United States Attorney
United States Attorneys Office
11 Elmwood Avenue
P.O. Box 570
Burlington, VT 05402
(802) 951-6725

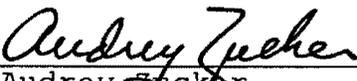
United States v. Tansitor Electronics, Inc. and
Siemens Communication Systems, Inc.
Consent Decree Signature Page

Date: 9/28/98



John P. DeVillars
Regional Administrator
U.S. Environmental Protection
Agency - Region I
J.F. Kennedy Federal Building
Boston, MA 02202-2211

Date: 9/22/98

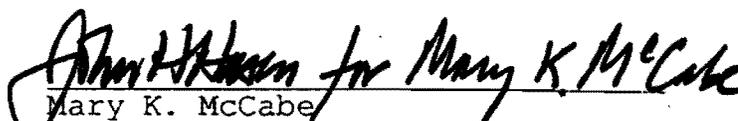


Audrey Zucker
Senior Enforcement Attorney
U.S. Environmental Protection
Agency
Region I
J.F. Kennedy Federal Building
Mailcode SES
Boston, MA 02202-2211
(617) 565-3444

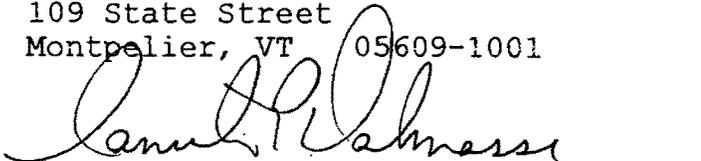
United States v. Tansitor Electronics, Inc. and
Siemens Communication Systems, Inc.
Consent Decree Signature Page

FOR THE STATE OF VERMONT

Date: 9/21/98


Mary K. McCabe
Assistant Attorney General
State of Vermont
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

Date: 9/18/98


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

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Tansitor Electronics, Inc. and Siemens Communication Systems, Inc., relating to the Tansitor Electronics, Inc. Superfund Site.

FOR TANSITOR ELECTRONICS, INC.

Date: 9/15/98 Carroll G. Killen
Name: Carroll G. Killen
Title: Director
Address: Tansitor Electronics, Inc.
P.O. Box 230
West Road
Bennington, VT 05201

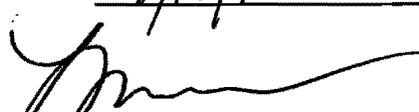
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Christopher P. Davis
Title: Counsel
Address: Goodwin, Procter & Hoar LLP
Exchange Place, Boston, MA 02109
Tel. Number: (617) 570-1000

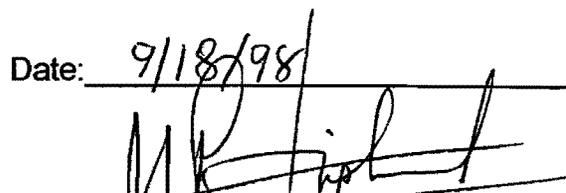
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Tansitor Electronics, Inc. and Siemens Communication Systems, Inc., relating to the Tansitor Electronics, Inc. Superfund Site.

FOR Siemens Communication Systems, Inc. */

Date: 9/18/98


Fred Fromm
President and CEO
900 Broken Sound Parkway
Boca Raton, FL 33487

Date: 9/18/98


Herman Stiphout
Vice President and CFO
900 Broken Sound Parkway
Boca Raton, FL 33487

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

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801