

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA and  
STATE OF RHODE ISLAND,

Plaintiffs,

v.

LANDFILL & RESOURCE RECOVERY  
INC., et al.,

Defendants.

CIVIL ACTION NO.

SETTLEMENT AGREEMENT AND CONSENT DECREE

## TABLE OF CONTENTS

I. <u>BACKGROUND</u> . . . . .	1
II. <u>JURISDICTION</u> . . . . .	9
IV. <u>DEFINITIONS</u> . . . . .	11
V. <u>GENERAL PROVISIONS</u> . . . . .	19
VI. <u>PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS</u> . . . . .	25
VII. <u>MODIFICATION OF THE SOW</u> . . . . .	34
VIII. <u>EPA REMEDY REVIEW</u> . . . . .	37
IX. <u>QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS</u> . . . . .	38
X. <u>ACCESS AND INSTITUTIONAL CONTROLS</u> . . . . .	40
XI. <u>REPORTING REQUIREMENTS</u> . . . . .	50
XII. <u>SUBMISSIONS REQUIRING AGENCY APPROVAL</u> . . . . .	53
XIII. <u>PROJECT COORDINATORS</u> . . . . .	56
XIV. <u>ASSURANCE OF ABILITY TO COMPLETE WORK</u> . . . . .	57
XVI. <u>EMERGENCY RESPONSE</u> . . . . .	63
XVII. <u>REIMBURSEMENT IN SATISFACTION OF CLAIMS</u> . . . . .	64
XIX. <u>INDEMNIFICATION AND INSURANCE</u> . . . . .	71
XX. <u>FORCE MAJEURE</u> . . . . .	74
XXI. <u>DISPUTE RESOLUTION</u> . . . . .	78
XXII. <u>STIPULATED PENALTIES</u> . . . . .	84
XXIII. <u>COVENANTS NOT TO SUE BY PLAINTIFFS</u> . . . . .	91
XXIV. <u>COVENANTS BY SETTLING DEFENDANTS</u> . . . . .	103
XXVI. <u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u> . . . . .	106
XXVI. <u>ACCESS TO INFORMATION</u> . . . . .	110
XXVII. <u>RETENTION OF RECORDS</u> . . . . .	111

XXVIII.	<u>NOTICES AND SUBMISSIONS</u>	113
XXIX.	<u>EFFECTIVE DATE</u>	115
XXX.	<u>RETENTION OF JURISDICTION</u>	115
XXXI.	<u>APPENDICES</u>	116
XXXII.	<u>COMMUNITY RELATIONS</u>	117
XXXIII.	<u>MODIFICATION</u>	117
XXXIV.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	118
XXXV.	<u>SIGNATORIES/SERVICE</u>	119

## I. BACKGROUND

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

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred and to be incurred by EPA and the Department of Justice for response actions at the Landfill & Resource Recovery Superfund Site in North Smithfield, Rhode Island, together with accrued interest; (2) performance of response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP"); and (3) payment in satisfaction of the United States' claim for civil penalties, pursuant to CERCLA Section 106(b)(1), 42 U.S.C. § 9606(b)(1), for the Performing Settling Defendants' and Owner Settling Defendants alleged non-compliance with the Unilateral Administrative Order (as hereinafter defined).

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 Rhode Island (the "State") on August 4, 1993, of negotiations with potentially responsible parties ("PRPs") regarding the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such

negotiations and to be a party to this Settlement Agreement and Consent Decree ("Decree").

D. The State of Rhode Island 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 R.I.G.L. Chapters 23-19.1, 42-17.1, 23-23, and 23-18.9 for (1) the State's claim for Past and Future response costs, (2) the State's claim for contempt penalties pursuant to R.I.G.L. Chapters 23-18.9 and the inherent powers of the Court for Landfill & Resource Recovery Inc.'s violation of the Court Order and Consent Agreement in Landfill & Resource Recovery, Inc. v. Rhode Island Department of Environmental Management, C.A. No. 81-4091 (R.I. Sup. Ct.); and (3) compensation for damage to Natural Resources under the trusteeship of the Director of the Rhode Island Department of Environmental Management ("RIDEM") pursuant to Section 107 of CERCLA and R.I.G.L. 46-13.1.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration and the United States Department of the Interior on January 26, 1994, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Settlement Agreement and Consent Decree.

F. The Defendants that have entered into this Settlement Agreement and Consent Decree ("Settling Defendants") do not admit

any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints. Settling Defendants do not admit any of the representations or recitations of fact in this Background section.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40671.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced in May 1986, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. EPA issued a Remedial Investigation ("RI") Report in June 1988 and EPA also issued a Feasibility Study ("FS") Report in June 1988.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the issuance of the FS Report and of the proposed plan for remedial action on July 11, 1988, 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 the Record of Decision

("ROD"), executed on September 29, 1988, on which the State had a reasonable opportunity to review and comment and on which the State had given concurrence, by letter dated September 27, 1988, which was withdrawn pursuant to an Order of the Superior Court of the State of Rhode Island, dated November 22, 1988. By letter dated November 22, 1988, the State stated its concurrence only with the portions of the ROD which were identical to the remedy agreed upon by RIDEM and Landfill & Resource Recovery, Inc. in a Court Order and Consent Agreement dated July 13, 1983, in Landfill & Resource Recovery, Inc. v. Rhode Island Department of Environmental Management, C.A. No. 81-4091 (R.I. Sup. Ct.). The Settling Defendants have constructed the remedy set forth in the final 100% Design for the remedy at the Site approved by EPA pursuant to the Unilateral Administrative Order ("UAO"). Landfill & Resource Recovery, Inc. has acknowledged that Landfill & Resource Recovery, Inc. is authorized to perform the remedy set forth in the final 100% Design pursuant to and consistent with the State Court Order. 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. The ROD was modified by an Explanation of Significant Differences ("ESD"), executed on March 8, 1991. The ROD was further modified by an ESD executed on September 16, 1996.

M. By letter dated February 26, 1990, EPA issued Special Notice pursuant to Section 122(e) of CERCLA to 87 PRPs. By letter dated March 16, 1990, EPA issued Special Notice to 19

additional PRPs. Certain of the Settling Defendants were among the parties to which EPA issued Special Notice. Pursuant to CERCLA Section 122(e), EPA engaged in settlement negotiations with these PRPs in 1990 to obtain performance of the Remedial Action and recovery of response costs, but the negotiations did not result in settlement between any of the parties.

N. Pursuant to Sections 104(e) and 106(a) of CERCLA, EPA Region I issued a Unilateral Administrative Order (U.S. EPA Docket No. I-90-1085) on June 29, 1990, for performance of response actions at the Site. The Unilateral Administrative Order was made effective against fourteen PRPs including certain of the Settling Defendants, on September 19, 1990. The Unilateral Administrative Order was modified by a First Modification to Scope of Work and Administrative Order on October 19, 1990, which modified the Scope of Work appended to the Unilateral Administrative Order and made such Order effective against four additional PRPs, including certain of the Settling Defendants. The Unilateral Administrative Order was further modified by a Second Modification to Scope of Work and Administrative Order on January 30, 1992, which deleted ten PRPs from the Unilateral Administrative Order. The PRPs that remained subject to the Unilateral Administrative Order are collectively the "Respondents." Certain of the Respondents have been performing remedial activities pursuant to the Unilateral Administrative Order since the effective dates listed above. The United States, on behalf of the Administrator of EPA alleges that



the Respondents did not fully or timely perform the remedial activities required by the Unilateral Administrative Order. Settling Defendants deny these allegations.

O. Certain of the Respondents to the UAO engaged GZA GeoEnvironmental, Inc. ("GZA") as its Supervising Contractor to supervise and perform Respondents' obligations for remedial design required under the UAO from November 30, 1990 to October 10, 1991. On September 16, 1992, certain of the Respondents filed suit against GZA for breach of contract alleging that GZA did not perform the Remedial Design work required by the Unilateral Administrative Order Scope of Work and GZA's contract with the Respondents. The Court granted summary judgment in favor of those Respondents by Memorandum and Order on Plaintiffs' motion for Summary Judgment, issued April 15, 1994, finding that GZA breached its contract with those Respondents. (Avnet, Inc. v. GZA GeoEnvironmental, Inc., C.A. 92-6021E (Mass. Sup. Ct.)). It is those Respondents' position that: all alleged violations of the Unilateral Administrative Order were the result of the actions and/or inactions of GZA in breach of its contract with the Respondents; that the actions/inactions were unknown to Respondents and contrary to the express directions of Respondents; that Respondents are not legally responsible for GZA's actions/inactions; and that at no time did Respondents willfully violate or fail or refuse to comply with any lawful order.

P. On January 30, 1992, EPA entered into a de minimis settlement pursuant to Section 122(g) of CERCLA with 46 PRPs, each of which, according to EPA, disposed of less than 1% of the hazardous substances at the Site. These parties had participated in the unsuccessful Special Notice negotiations referenced in Paragraph M above.

Q. On July 25, 1991, prior to the completion of the de minimis settlement, certain of the Settling Defendants, many of whom are also Respondents to the UAO, filed an action (captioned Avnet, Inc. v. Amtel, Inc., C.A. No. 91-0383-B (D.R.I.)) against 48 parties, (some of whom later entered into the de minimis settlement agreement with EPA described in Paragraph P above), alleging that the 48 parties were liable to the Settling Defendants for response costs at the Site. By order dated October 30, 1992, the Court granted summary judgment in favor of those parties who had entered into the settlement described in Paragraph P. On February 2, 1993, the plaintiffs in Avnet v. Amtel filed suit against the United States (captioned Suffolk Services, Inc. v. United States, C.A. No. 93-0064B (D.R.I.)), pursuant to the Administrative Procedures Act ("APA"), challenging the validity of the de minimis settlement referenced above. By order of the Court, the plaintiffs in Suffolk Services (certain of the Settling Defendants) filed an amended complaint in Avnet v. Amtel, and consolidated their APA claims brought in Suffolk Services as Counts II and III of Avnet v. Amtel. Hereinafter, the cases are referred to as Avnet v. Amtel. On

May 17, 1994, Magistrate Judge Timothy Boudewyns filed a Report and Recommendation with the Court recommending dismissal of Counts II and III of Avnet v. Amtel (the APA claims) on jurisdictional grounds. On November 29, 1994, Judge Boyle adopted the Magistrate's Report and Recommendation, and issued a final judgment on April 3, 1995. On June 2, 1995, certain of the Settling Defendants filed a notice of appeal of this judgment. Avnet, Inc. v. Amtel, Inc., No. 95-1619 (1st Cir.). The appeal is pending.

R. In 1981, Landfill & Resource Recovery, Inc. commenced litigation against RIDEM concerning the closure of the Landfill pursuant to the Rhode Island solid waste management laws and regulations (Landfill & Resource Recovery, Inc. v. RIDEM, C.A. 81-4091 (R.I. Sup. Ct.)). This action resulted in a Court Order and Consent Agreement dated July 13, 1983, which was followed by a court order dated November 22, 1988, and an Agreement in Furtherance of Court Order of July 13, 1983, dated April 10, 1990 (collectively, "the State Court Order"). On June 28, 1994, RIDEM filed a Petition for Contempt and Motion to Modify the State Court Order. That motion is pending.

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

T. 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 Performing Settling Defendants and Owner Settling Defendants shall constitute a response action taken or ordered by the President.

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

V. The Parties recognize, and the Court by entering this Settlement Agreement and Consent Decree finds, that this Settlement Agreement and Consent Decree has been negotiated by the Parties in good faith, that implementation of this Settlement Agreement and Consent Decree will expedite the cleanup at the Site and will avoid prolonged and complicated litigation between the Parties, and that this Settlement Agreement and 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. For the purposes of this Settlement Agreement and 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 Settlement Agreement and Consent Decree or this Court's jurisdiction to enter and enforce this Settlement Agreement and Consent Decree. The Complaint states claims against Settling Defendants upon which, if proved, relief may be granted.

### III. PARTIES BOUND

2. This Settlement Agreement and Consent Decree applies to and is binding upon the United States on behalf of EPA, the Secretary of the Department of the Interior ("DOI"), and the National Oceanic and Atmospheric Administration ("NOAA"), and the State, and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Settling Defendants' responsibilities under this Settlement Agreement and Consent Decree.

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

into hereunder upon performance of the Work in conformity with the terms of this Settlement Agreement and Consent Decree.

Performing Settling Defendants or their contractors shall provide written notice of the Settlement Agreement and Consent Decree to all subcontractors hired to perform any portion of the Work required by this Settlement Agreement and Consent Decree.

Performing Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Settlement Agreement and Consent Decree. With regard to the activities undertaken pursuant to this Settlement Agreement and Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Performing Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

#### IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Settlement Agreement and 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 Settlement Agreement and Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Cannons Defendants" shall mean J. Robert Cannon and J. Scott Cannon.

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

"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 Settlement Agreement and 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.

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

"Funding Entities" shall mean Fireman's Fund Insurance Company, American Policyholders Insurance Company, and Reliance Insurance Company.

"Future Response Costs" shall mean all costs, other than Oversight Costs, including, but not limited to, direct and indirect costs (as such indirect costs may from time to time be calculated), that the United States and the State incur after lodging of this Settlement Agreement and Consent Decree for developing or modifying plans, reports or other items required pursuant to this Settlement Agreement and Consent Decree, or otherwise implementing, or enforcing this Settlement Agreement and Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs

incurred pursuant to Sections VII, VIII, X (including, but not limited to, attorneys fees and the amount of just compensation), XVI, XVII, and Paragraph 93 of Section XXIII (Covenants Not to Sue by Plaintiffs). Future Response Costs shall also include all non-contractor costs, including direct and indirect costs, incurred by the United States and the State in connection with the Site between July 1, 1996, and the lodging of this Settlement Agreement and Consent Decree, including, but not limited to, non-contractor costs incurred by the United States in reviewing or developing plans, reports, and other items pursuant to the Unilateral Administrative Order (as hereinafter defined), verifying the work performed pursuant to the Unilateral Administrative Order (including, without limitation, overseeing any on-site activities), or otherwise implementing, overseeing, or enforcing the Unilateral Administrative Order, including, but not limited to, payroll costs, travel costs, and laboratory costs.

"Institutional Controls" shall mean deed restrictions and other requirements and controls developed for one or more of the following purposes: 1) to restrict the use of groundwater at the Site; 2) to limit human or animal exposure to Waste Material at or emanating from the Site; 3) to ensure non-interference with the performance of the Work; and 4) to ensure the integrity and effectiveness of the Work.

"Interest", in accordance with 42 U.S.C. § 9607(a), shall mean interest at the rate specified for interest on investments of the



Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507. In calculating the Interest, EPA may compound on a daily, monthly or annual basis.

"Landfill" shall mean the landfill covering approximately 28 acres of a 36-acre parcel of land owned by Landfill & Resource Recovery, Inc., located on Oxford Turnpike in North Smithfield, Rhode Island.

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

"Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), and as provided in R.I.G.L. Chapter 23-19.1.

"Natural Resource Damages" means damages recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources of the L&RR Site, including the reasonable costs of assessing such injury, destruction or loss, or damages recoverable under R.I.G.L. 23-19.1 et seq., and under the common law of the State of Rhode Island.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan and/or Post Closure Operation and Maintenance Plan approved or developed by EPA pursuant to the UAO or modified and approved

pursuant to this Settlement Agreement and Consent Decree and the Statement of Work ("SOW").

"Oversight Costs" shall mean all costs, including but not limited to, direct and indirect costs, that the United States and the State incur after lodging of this Settlement Agreement and Consent Decree in reviewing plans, reports and other items for O&M or other Work pursuant to this Settlement Agreement and Consent Decree, verifying the O&M or other Work activities (including, without limitation, overseeing any on-site activities), or otherwise overseeing the O&M or other Work activities performed pursuant to this Settlement Agreement and Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs. Oversight Costs do not include Future Response Costs as defined above.

"Owner Settling Defendants" shall mean the Settling Defendants listed in Appendix E.

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

"Parties" shall mean the United States, the State of Rhode Island, the Funding Entities and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United States and the State incurred with regard to the Site prior to lodging of this Settlement Agreement and Consent Decree, including, but not limited to, payroll costs, contractor costs,

travel costs, and laboratory costs. Except that Past Response Costs shall not include all non-contractor costs the United States has incurred from July 1, 1996, until the lodging of this Settlement Agreement and Consent Decree, in reviewing or developing plans, reports, and other items pursuant to the Unilateral Administrative Order (as hereinafter defined), verifying the work performed under the UAO (including, without limitation, overseeing on-site activities), or otherwise implementing, overseeing, or enforcing the UAO, including, but not limited to, payroll costs, travel costs, and laboratory costs.

"Performance Standards" shall mean those cleanup standards, standards of control, cleanup levels, treatment standards, institutional controls, and other substantive requirements, criteria or limitations set forth in the ROD or Paragraph 14 of this Settlement Agreement and Consent Decree or the SOW.

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

"Plaintiffs" shall mean the United States and the State of Rhode Island.

"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, 1988, by the Regional Administrator, EPA Region I, all attachments

thereto, and as modified by the Explanation of Significant Differences, signed on March 8, 1991, by the Regional Administrator, EPA Region I and as modified by the Explanation of Significant Differences signed on September 16, 1996.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, undertaken and to be undertaken by the Performing Settling Defendants and/or Owner Settling Defendants to implement the ROD in accordance with final plans and specifications submitted by the Performing Settling Defendants pursuant to the Remedial Design Work Plan and approved by EPA.

"Remedial Design/Remedial Action Work Plan" or "RD/RA Work Plan" shall mean the document submitted by the Performing Settling Defendants pursuant to Paragraph 13.a of this Settlement Agreement and Consent Decree.

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

"RIDEM" shall mean the Rhode Island Department of Environmental Management and any successor departments or agencies of the State.

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

"Settlement Agreement and Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section

XXXI). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Settling Defendants" shall mean those Parties identified in Appendices D (Performing Settling Defendants), E (Owner Settling Defendants) and the Cannons Defendants.

"Site" shall mean the Landfill & Resource Recovery Superfund site, located on Oxford Turnpike, northwest of Pound Hill Road in North Smithfield, Providence County, Rhode Island and depicted generally on the map attached as Appendix C.

"State" shall mean the State of Rhode Island.

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

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

"Unilateral Administrative Order" or "UAO" shall mean the Administrative Order, Docket No. I-90-1085, issued by the Regional Administrator, EPA Region I, on June 29, 1990, and as modified by First Modification to Scope of Work and Administrative Order, issued by the Regional Administrator, EPA Region I, on October 19, 1990, and by Second Modification to

Administrative Order, issued by the Regional Administrator, EPA Region I, on January 30, 1992. All references to the Unilateral Administrative Order or UAO shall mean the Unilateral Administrative Order as modified, unless the context indicates otherwise.

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "hazardous waste" under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5); and (3) any "hazardous waste" under R.I.G.L. Chapter 23-19.1.

"Work" shall mean all activities Performing Settling Defendants and Owner Settling Defendants are required to perform under this Settlement Agreement and Consent Decree, including, but not limited to, the remaining components of the Remedial Action not completed pursuant to the UAO, Operation and Maintenance and any additional response actions; provided however that "Work" shall not include those activities required by Section XXVII (Retention of Records).

## V. GENERAL PROVISIONS

### 5. Commitments by Settling Defendants

a. Performing Settling Defendants and Owner Settling Defendants shall finance and perform the Work in accordance with this Settlement Agreement and Consent Decree and all plans, standards, specifications, and schedules set forth in or developed or approved by EPA pursuant to this Settlement

Agreement and Consent Decree. Performing Settling Defendants and Owner Settling Defendants shall also reimburse the United States and the State for Past Response Costs, Oversight Costs and Future Response Costs and make the other payments and perform the other obligations required by this Settlement Agreement and Consent Decree. Performing Settling Defendants and Owner Settling Defendants shall also compensate the United States and the State for damage to Natural Resources under the trusteeship of the Secretary of the Interior, NOAA and the Director of RIDEM as provided in this Settlement Agreement and Consent Decree. Performing Settling Defendants shall dismiss with prejudice all claims brought in the civil action captioned Avnet v. Amtel, C.A. No. 91-0383B (D.R.I.), and shall dismiss with prejudice the appeal of such civil action.

b. The obligations of Performing Settling Defendants and Owner Settling Defendants to finance and perform the Work and to pay amounts owed the United States and the State under this Settlement Agreement and Consent Decree are joint and several. All obligations of the Performing Settling Defendants under this Settlement Agreement and Consent Decree shall be deemed obligations of the Owner Settling Defendants, who shall be jointly and severally liable for their performance. Except as specifically set forth in Paragraph 8 and Section X, in the event of the failure of any one or more Performing Settling Defendants and/or Owner Settling Defendants to implement the requirements of this Settlement Agreement and Consent Decree, the remaining

Performing Settling Defendants and/or Owner Settling Defendants shall complete all such requirements.

c. The Cannons Defendants have reimbursed the United States for Past and Future Response Costs as provided in Paragraph 52.b. of this Settlement Agreement and Consent Decree. The Cannons Defendants represent and the Plaintiffs understand that entities other than the Cannons Defendants ("Funding Entities") have made the monetary payments referenced in Paragraph 52.b. of this Settlement Agreement and Consent Decree. Settlement with the Cannons Defendants is based on their representations concerning their financial condition.

6. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Settlement Agreement and 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 Settlement Agreement and Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

7. Permits

a. As provided in Section 121(e) of CERCLA and § 300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Performing



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

b. The Performing Settling Defendants may seek relief under the provisions of Section XX (Force Majeure) of this Settlement Agreement and 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 if the Performing Settling Defendants submitted timely, complete and adequate applications and took all other actions necessary to obtain all such permits or approvals.

c. All hazardous waste, as defined under Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), which Performing Settling Defendants generate in performance of the Work shall be managed by the Performing Settling Defendants in accordance with the NCP, including but not limited to the RCRA requirements relating to the use and signing of manifests. Performing Settling Defendants or their representatives shall be listed as the generators on all manifested shipments of hazardous waste generated during performance of the Work.

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

8. Notice of Obligations to Successors-in-Title

a. With respect to any property owned or controlled by any of the Owner Settling Defendants that is located within the

Site, within 15 days after the entry of this Settlement Agreement and Consent Decree, each such Owner Settling Defendant shall file a notice with the Recorder's Office or Registry of Deeds or other appropriate office, Providence County, State of Rhode Island in substantially the form attached as Appendix I, which shall provide notice to all successors-in-title that the property is located within the Site, that EPA selected a remedy for the Site, that a Consent Decree requiring the implementation of the remaining portions of the remedy by potentially responsible parties was approved by the United States District Court for the District of Rhode Island in United States v. Landfill & Resource Recovery Inc., and that the property is subject to access and institutional controls. Owner Settling Defendants shall give EPA and the State a certified copy of the recorded notice within ten days of recording the notice at the addresses set forth in Section XXVIII (Notices and Submissions).

b. The obligations of each Owner Settling Defendant with respect to the provision of access under Section X (Access and Institutional Controls) and the implementation of institutional controls under Section X shall be binding upon any and all such Owner Settling Defendants and any and all persons who subsequently acquire any interest or portion of the Site (hereinafter "Successors-in-Title"). Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notices and covenants applicable to the property.

c. Any Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, give written notice of this Settlement Agreement and Consent Decree and any easements that have been filed with respect to the property pursuant to Section X (Access and Institutional Controls) to the grantee and written notice to EPA, the State, and the Performing Settling Defendants of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Settlement Agreement and Consent Decree and easements was given to the grantee. In the event of any such conveyance, the Owner Settling Defendants' and Performing Settling Defendants' obligations under this Settlement Agreement and Consent Decree, including their obligations to provide or secure institutional controls and access pursuant to Section X, shall continue to be met by the Owner Settling Defendants and the Performing Settling Defendants. In addition, if the United States and the State approve, the grantee may perform some or all of the Work under this Settlement Agreement and Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Owner Settling Defendants and the Performing Settling Defendants to comply with the Settlement Agreement and Consent Decree.

# VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

9. Except for the activities described below in subparagraphs (a)(4), (a)(5), (b) and (c), the Performing Settling Defendants have performed the response actions for the Site as described in the Record of Decision ("ROD") attached hereto as Appendix A. The Performing Settling Defendants and Owner Settling Defendants shall perform the Work as described in the Statement of Work ("SOW") (which the Parties agree is consistent with the ROD), attached hereto as Appendix B; and any modifications thereto. The ROD, the SOW, and all modifications to the SOW, are hereby incorporated by reference and made a part of this Decree. The Work shall be performed in accordance with all the provisions of this Decree, the SOW, any modifications to the SOW, and all design specifications, Work Plans or other plans or schedules attached to or approved pursuant to the SOW. The major components of the Remedial Action for the Site are as follows:

a. (1) Upgrading the Landfill closure by extending the steep side slopes in the uncovered northeast area of the Landfill, installing a synthetic cover in this area; (2) establishing a cover thickness of at least twenty-four (24) inches and vegetation over the entire Landfill; (3) upgrading the surface water runoff management system; (4) ensuring Site security by installing and maintaining a fence around the entire Site; and (5) establishing institutional controls.

b. Collecting and treating the Landfill gas using a thermal destruction technology so that volatile organic compound concentrations in ambient air are reduced and risks to public health and the environment are minimized.

c. Post-closure inspection, operation and maintenance of the Landfill cap, gas collection and treatment system, and other components of the remedy; long-term monitoring of the groundwater and surface water, Landfill gas emissions and migration, and ambient air to ensure that the remedy remains protective.

10. Upon entry of this Settlement Agreement and Consent Decree by the Court, the UAO shall cease to have independent legal significance and will be superseded by this Settlement Agreement and Consent Decree, which shall govern the performance of the Work by Settling Defendants. Except as provided herein, all Work Plans, design specifications or other plans, reports, or schedules, as approved by EPA pursuant to the UAO and the UAO SOW shall be incorporated into and shall be enforceable under this Settlement Agreement and Consent Decree. Upon lodging of this Settlement Agreement and Consent Decree by the Court, the Performing Settling Defendants and Owner Settling Defendants shall immediately commence performance of the Work in accordance with the provisions of this Settlement Agreement and Consent Decree, the SOW, any modifications to the SOW, and all design specifications, Work Plans or other plans or schedules attached to or approved pursuant to the SOW or approved by EPA pursuant to the UAO and the UAO SOW and incorporated herein and enforceable hereunder. Upon the effective date of this Settlement Agreement and Consent Decree, all Future Response Costs incurred from July 1, 1996 to the lodging of the Settlement Agreement and Consent Decree, and Oversight Costs incurred after lodging of the Settlement Agreement and Consent Decree, shall be reimbursed in accordance with Section XVIII and Appendix G.

11. Plaintiffs acknowledge that Performing Settling Defendants have completed the Remedial Design pursuant to the Unilateral Administrative Order.

12. a. All Work to be performed by the Performing Settling Defendants and Owner Settling Defendants pursuant to this Settlement Agreement and Consent Decree shall be under the direction and supervision of a qualified contractor. If the Performing Settling Defendants and/or Owner Settling Defendants do not continue to employ de maximis, inc., as the Supervising Contractor, and Miller Engineering and Testing, Inc., Smith Environmental, O & M, Inc., IEA, Inc., Trillium, Inc., RECON, Inc., CW Miller, and 21st Century Environmental Management as contractors or subcontractors, or if the Performing Settling Defendants and/or Owner Settling Defendants intend to employ any other Supervising Contractor or any other contractors or subcontractors, then within 20 days after determining that a different Supervising Contractor or contractor or subcontractor will be employed, the Performing Settling Defendants and Owner Settling Defendants shall notify EPA and the State in writing of the name, title and qualifications of the Supervising Contractor and the names of any other contractors and/or subcontractors proposed to be used in carrying out the Work to be performed pursuant to this Settlement Agreement and Consent Decree. Selection of any such Supervising contractor or any other contractor and/or subcontractor (collectively "contractors") shall be subject to disapproval by EPA. If EPA disapproves of the selection of any contractor, the Performing Settling Defendants and Owner Settling Defendants shall submit a list of alternative contractors, including their qualifications, to EPA

and the State within 21 days of receipt of the disapproval of the contractor previously proposed. Upon notice of EPA's response the Performing Settling Defendants and Owner Settling Defendants may select any contractor from that list not disapproved by EPA and shall notify EPA and the State of the name of the selected contractor within five (5) working days following receipt of notice from EPA.

b. All Work to be performed by the Performing Settling Defendants and Owner Settling Defendants pursuant to this Settlement Agreement and Consent Decree and under the direction and supervision of the Supervising Contractor. EPA may require that Work under this Settlement Agreement and Consent Decree be subject to quality assurance by an independent, qualified contractor if EPA determines that the Work fails to meet the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services. Any such determination shall be subject to dispute resolution pursuant to Section XXI (Dispute Resolution). Within 20 days after notification by EPA that Work pursuant to this Settlement Agreement and Consent Decree shall be subject to quality control by an independent, qualified contractor (unless dispute resolution has been timely sought), the Performing Settling Defendants and Owner Settling Defendants shall notify EPA and the State, in writing, of the name, title, and qualifications of the Independent Quality Assurance Team (IQAT) that shall be responsible for evaluating, collecting, examining and/or testing

various data, materials, procedures, and equipment during the designated Work. The IQAT shall be retained by the Performing Settling Defendants and shall be from an independent consulting, testing and/or inspection organization. The IQAT shall function to (a) direct and perform tests for quality assurance inspection activities; (b) verify that O & M and other Work is implemented; (c) perform independent on-site inspections of the Work and evaluations of the data to assess compliance with project standards; (d) verify that equipment and testing procedures meet the test requirements; and (e) report to the Performing Settling Defendants, Owner Settling Defendants EPA and the State the results of all inspections.

13. The following Work shall be performed by Performing Settling Defendants and Owner Settling Defendants:

a. In accordance with the time periods specified in the SOW, Performing Settling Defendants submitted for review, modification and/or approval by EPA, after opportunity for review and comment by the State, work plans for Remedial Design/Remedial Action (RD/RA Work Plan), 100% Design, Remedial Action and Implementation (RAI Plan), Operation and Maintenance (O & M Plan) and Post Closure Operation and Maintenance ("Post Closure O & M Plan"). EPA and the State acknowledge that the Performing Settling Defendants have completed the RD/RA Work Plan, 100% Design, RAI Plan, the O & M Plan, and the Post Closure O & M Plan and such Work Plans were approved by EPA in accordance with the terms of the UAO. As of the effective date of this



Settlement Agreement and Consent Decree, the RD/RA Work Plan, the 100% Design, the RAI Plan, the O & M Plan, and the Post Closure O & M Plan, as approved by EPA, shall be enforceable under this Settlement Agreement and Consent Decree.

b. Performing Settling Defendants have begun performing and shall complete performing the Work detailed in all EPA approved work plans, plans and documents. All work plans, plans and documents and any submissions required thereunder or under this Settlement Agreement and Consent Decree shall be enforceable under this Settlement Agreement and Consent Decree. All response activities shall be conducted in accordance with the National Contingency Plan, the EPA Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0-4A), any additional guidance provided by EPA, and the requirements of this Settlement Agreement and Consent Decree, including the standards, specifications and schedules contained in the SOW and all approved plans and documents. To the extent that EPA provides any additional guidance documents to Performing Settling Defendants, these additional guidance documents shall only be applicable to future obligations.

c. The Post Closure O & M Plan was approved by EPA and supersedes the O & M Plan.

d. Performing Settling Defendants and Owner Settling Defendants shall implement the Work detailed in the Post Closure O&M Plan and the SOW. The Post Closure O&M Plan, the SOW and any submissions required thereunder or under this Settlement

Agreement and Consent Decree shall be enforceable under this Settlement Agreement and Consent Decree. All response activities shall be conducted in accordance with the National Contingency Plan, the EPA Superfund Remedial Design and Remedial Action guidance (OSWER Directive 9355.0-4A), and any additional guidance provided by EPA, and the requirements of this Settlement Agreement and Consent Decree, including the standards, specifications and schedules contained in the SOW. To the extent that EPA provides any additional guidance documents to Performing Settling Defendants and/or Owner Settling Defendants, these additional guidance documents shall only be applicable to future obligations.

14. The Work performed by Performing Settling Defendants and Owner Settling Defendants pursuant to this Settlement Agreement and Consent Decree must, at a minimum, achieve the following Performance Standards:

a. Cleanup Standards: The target cleanup level for the gaseous emissions are as dictated by the Rhode Island Air Toxics Regulations. These Cleanup Standards must be met at the perimeter of the Landfill:

<u>Contaminant</u>	<u>Cleanup Level (ug/m<sup>3</sup>)*</u>
Chloroform	0.04
1,2-dichloroethane	0.04
Carbon tetrachloride	0.03
Benzene	0.1
Methylene chloride	0.2

Trichloroethene	0.3
Tetrachloroethene and 1,1,2,2-Tetrachloroethane	0.05
Toluene	400

\* Acceptable ambient level (annual average)

b. Other Performance Standards: All remedial activities must meet or attain all applicable or relevant and appropriate federal and state standards, requirements, criteria or limitations (to the extent they are applicable or relevant and appropriate) identified in the ROD, the SOW and the approved design documents, and such other standards, requirements, criteria or limitations are hereby incorporated by reference and must be attained, as if set forth fully herein. All remedial activities must meet or attain all other health or environmentally related numerical standards set forth in the ROD, and must meet or attain all standards for closure of the Landfill, the gas collection and thermal destruction system, and air, surface water and groundwater monitoring specified in the ROD and the SOW, including standards for upgrading the Landfill closure set forth in Section IV.A of the SOW, standards for the gas collection and thermal destruction treatment system set forth in Section IV.B of the SOW, and standards for air and groundwater monitoring set forth in Section IV.C of the SOW.

c. Settling Defendants shall not use any portion of the Site in any manner that EPA determines would adversely affect the integrity of any containment system, treatment system or

monitoring system installed pursuant to this Settlement Agreement and Consent Decree.

d. The Performing Settling Defendants and Owner Settling Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Settlement Agreement and Consent Decree.

15. Performing Settling Defendants and Owner Settling Defendants acknowledge and agree that nothing in this Settlement Agreement and Consent Decree, the SOW, the Remedial Design/Remedial Action Work Plan, the 100% Design, the Remedial Action Implementation Plan, the O&M Plan or the Post Closure O&M Plan constitutes a warranty or representation of any kind by Plaintiffs that compliance with the Work requirements set forth in the SOW and the Plans will achieve the Performance Standards. Performing Settling Defendants' and/or Owner Settling Defendants' compliance with the Work requirements shall not foreclose Plaintiffs from seeking compliance with all terms and conditions of this Settlement Agreement and Consent Decree, including, but not limited to, the applicable Performance Standards.

16. a. Performing Settling Defendants have provided written notification of off-Site shipment of Waste Material from the Site to an out-of-state waste management facility to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material.

b. To the extent that any future notifications of off-Site shipments of Waste Materials are necessary, the Performing Settling Defendants or Owner Settling Defendants, as appropriate, shall include in any future written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Performing Settling Defendants or Owner Settling Defendants, as appropriate, shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state. The Performing Settling Defendants or Owner Settling Defendants, as appropriate, shall provide the information required by this Subparagraph before the Waste Material is actually shipped. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

#### VII. MODIFICATION OF THE SOW

17. If EPA determines that modification to the work specified in the SOW, work plans and/or other plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such

modification be incorporated in the SOW, work plans and/or such other plans. Provided, however, that a modification may only be required pursuant to this Section to the extent that it is consistent with the scope of the remedy selected in the ROD. For the purposes of this Section only, the "scope of the remedy selected in the ROD" is: containment of Waste Materials beneath a landfill cap to control the source of contamination and minimize contamination migrating from the landfill; collection and management of stormwater; collection and treatment of landfill gas; long term maintenance of the landfill cap and gas collection and treatment system; long term monitoring of air groundwater, and surface water; and establishment and maintenance of institutional controls and access necessary to implement the remedy at this Site and ensure that the remedy is protective of human health and the environment.

18. Within 60 days (unless EPA determines that more time is necessary) of receipt of written notice from EPA or Performing Settling Defendants pursuant to Paragraph 17 that additional response actions are necessary (or such longer time as may be specified by EPA), Performing Settling Defendants shall submit to EPA and the State, for approval by EPA, after reasonable opportunity for review and comment by the State, a work plan for the additional response actions. The plan shall conform to this Settlement Agreement and Consent Decree, the NCP, EPA Superfund Remedial Design and Remedial Action Guidance (OSWER Directive 9355.0-4A), and other guidances identified by EPA. To the extent

that EPA provides any additional guidance documents to Performing Settling Defendants, these additional guidance documents shall only be applicable to future obligations. Upon approval Performing Settling Defendants shall implement any work required by any modifications incorporated in the SOW, work plans and/or other plans developed pursuant to the SOW in accordance with this Section and with the schedule contained therein.

19. Any modifications to the SOW, the work plans and/or other plans developed pursuant to the SOW that Performing Settling Defendants propose are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State. If authorized by EPA, Performing Settling Defendants shall complete all such additional response actions in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XII (Submissions Requiring Agency Approval).

20. If Performing Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Section, they may seek dispute resolution pursuant to Section XXI (Dispute Resolution). Such a dispute shall be resolved pursuant to Paragraphs 64-68 of this Settlement Agreement and Consent Decree. The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute. Nothing in this Section shall be construed to limit EPA's authority to require

performance of further response actions as otherwise provided in this Settlement Agreement and Consent Decree.

#### VIII. EPA REMEDY REVIEW

21. Performing Settling Defendants shall conduct any studies and investigations as deemed necessary by EPA in order to permit EPA to conduct reviews of whether the Remedial Action 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.

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

23. a. If EPA selects further response actions for the Site, the Performing Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 85 or Paragraph 86 are satisfied. The Performing Settling Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution) to dispute (1) EPA's determination that the Remedial Action is not protective of human



health and the environment, (2) EPA's selection of the further response actions, or (3) EPA's determination that the reopener conditions of Paragraph 85 or Paragraph 86 of Section XXIV (Covenants Not To Sue) are satisfied. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 68 (record review).

b. If Performing Settling Defendants are required to perform further response actions pursuant to this Section, 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 Settlement Agreement and Consent Decree.

#### IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

24. Performing Settling Defendants shall use quality assurance, quality control, and chain of custody procedures throughout the performance of the Work in accordance with the SOW, EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines and guidances upon notification by EPA to Performing Settling Defendants of such amendment. Amended guidelines and guidances shall apply only to procedures conducted

after such notification. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with a Quality Assurance Project Plan ("QAPP") submitted pursuant to the SOW, and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Settling Defendants in implementing this Settlement Agreement and Consent Decree. In addition, Performing Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Performing Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Performing Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement Agreement and Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

25. Upon request of EPA or the State, the Performing Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Performing Settling Defendants shall notify EPA and the State not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and

the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Performing Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Performing Settling Defendants' implementation of the Work.

26. Performing Settling Defendants shall submit to EPA and the State 2 copies each 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 Settlement Agreement and Consent Decree unless EPA agrees otherwise.

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

#### X. ACCESS AND INSTITUTIONAL CONTROLS

28. Commencing upon the date of entry of this Settlement Agreement and Consent Decree, the Owner Settling Defendants and Performing Settling Defendants agree to provide the United States, the State, and their representatives, including, but not limited to, EPA and its contractors, and all the Performing Settling Defendants, access at all reasonable times to the Site and any other property to which access is required for the

implementation of this Settlement Agreement and Consent Decree, to the extent access to the property is controlled by Owner Settling Defendants and/or Performing Settling Defendants, respectively, including but not limited to, Lots 9, 9A, 10, 11, 67, 68 on Assessors Plat 7 in North Smithfield, Rhode Island, and a portion of Lot 3 on Plat 7, for the purposes of conducting any activity related to this Settlement Agreement and Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States or the State;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXVII;
- g. Assessing Settling Defendants' compliance with this Settlement Agreement and Consent Decree;
- h. Determining whether the property is being used in a manner that is prohibited by this Settlement Agreement and Consent Decree or related agreements or easements; and

i. Implementing the Work pursuant to the conditions set forth in Paragraph 93 of this Settlement Agreement and Consent Decree.

Prior to entry of this Settlement Agreement and Consent Decree, access shall continue to be provided pursuant to the UAO.

29. The Parties acknowledge the License Agreement Between Landfill & Resource Recovery, Inc. and Recycling of R.I., Inc. and the Members of the Landfill & Resource Recovery Site Group Regarding Portions of Lots 9, 9A, 10, 11, 67, 68 and 3 on Assessor's Plat 7 in North Smithfield, Rhode Island ("License Agreement") which became effective on April 10, 1991, and which is attached hereto as Appendix J. Upon entry of this Settlement Agreement and Consent Decree, the License Agreement shall be incorporated herein and enforceable hereunder. The Parties agree that the rights and benefits extended to the Members of the Landfill & Resource Recovery Site Group under the terms of the License Agreement shall also extend to the United States and the State, including their employees and contractors.

30. a. Commencing upon the date of entry of this Settlement and Consent Decree, the Owner Settling Defendants shall not use or permit the use of any of their property for which use restrictions are required to protect the remedial action set forth in the ROD, the public health, or the environment during or after implementation of the remedial action set forth in the ROD, including, but not limited to Lots 9, 9A, 10, 11, 67, 68 on Assessors Plat 7 in North Smithfield, Rhode Island, and a portion

of Lot 3 on Plat 7, in violation of any of the following restrictions:

i. No person shall consume or use groundwater underlying the property in any way except for the limited purpose of treating and monitoring groundwater contamination levels. Groundwater wells and facilities installed for such purpose shall only be installed pursuant to a plan approved by the United States after review and comment by the State.

ii. No person shall disturb the surface or subsurface of the cap by filling, drilling, excavation, or removal of topsoil or other materials.

iii. No person shall conduct any use or activity on the property that will disturb any of the remedial measures that have been implemented pursuant to the UAO or will be implemented pursuant to this Settlement Agreement and Consent Decree.

iv. No person shall conduct any activity that violates any additional use restrictions that EPA determines are required to protect the remedial action set forth in the ROD, the public health, or the environment during or after implementation of the remedial action set forth in the ROD.

b. If any Owner Settling Defendant seeks to undertake any restricted use or activity on the property, it may file a petition with EPA setting forth the nature of the use or activity, the reason why the use or activity is necessary, and any expected impact of the use or activity on the remedy, the public health, and the environment. The Owner Settling Defendant may undertake the restricted use or activity only if EPA determines, in its sole and unreviewable discretion, to allow such use or activity to be implemented pursuant to an approved plan. The Owner Settling Defendants shall notify EPA prior to any facility improvements or other construction activities on such property.

31. The Owner Settling Defendants agree to file the easements described below with respect to property that is owned or controlled by any of the Owner Settling Defendants, to which access by the United States or the State is required for the implementation of this Settlement Agreement and Consent Decree, or for which land or water use restrictions are required to ensure that the remedial action set forth in the ROD is and remains protective, and to protect the public health or the environment during or after the implementation of the remedial action set forth in the ROD, including, but not limited to, the property described as follows and as more specifically described in Appendix K: Lots 9, 9A, 10, 11, 67, 68 on Assessors Plat 7 in North Smithfield, Rhode Island, and a portion of Lot 3 on Plat 7. Owner Settling Defendants shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval, after a reasonable opportunity for review and comment by the State with respect to such property:

i. A draft easement that grants to the United States, the State, the Performing Settling Defendants, and/or their contractors and representatives (A) a right of access, running with the land and binding on successors-in-title, for the purpose of conducting any activity related to this Settlement Agreement and Consent Decree including, but not limited to, those activities listed in Subparagraph 28, and (B) a right, running with the land and binding on successors-in-title, to enforce any land and water use restrictions. The easement shall be enforceable under the laws of the State of Rhode Island, shall be in substantially the same form as the sample easement that is included as Appendix G to the Rhode Island Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (1996), shall be free and clear of all prior liens and encumbrances, and shall comply with the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

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

Within fifteen (15) days of EPA's approval and acceptance of the easement, the Owner Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the easement with the Recorder's Office or Registry of Deeds or other appropriate office of Providence County. Within thirty (30) days of filing the easement, the Owner Settling Defendants shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and the original recorded easement or a certified copy thereof showing the clerk's recording stamps. Owner Settling Defendants shall provide a copy of such documents to the State and Performing Settling Defendants at the same time as they are provided to EPA. If EPA notifies the Owner Settling Defendants that additional easements providing access rights are required for implementation of this Consent Decree, or that additional restrictive easements are needed to ensure that the remedial action set forth in the ROD is and remains protective, and to protect the public health, or the environment during or after implementation of the remedial action set forth in the ROD, the Owner Settling Defendants shall respond by following the procedure outlined in this Subparagraph as though the property had been identified in this Subparagraph, except that the time requirements shall commence with the date of receipt of the



written notice, as opposed to the date of entry of the Settlement Agreement and Consent Decree. A violation of any access easement or restrictive easement filed pursuant to this Settlement Agreement and Consent Decree by an Owner Settling Defendant shall be considered a violation of this Settlement Agreement and Consent Decree.

32. a. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree, or for which land or water use restrictions are needed to ensure the remedial action set forth in the ROD is or remains protective, or to protect the public health, or the environment during or after implementation of the remedial action set forth in the ROD, is owned or controlled by persons other than a Settling Defendant including, but not limited to, Lot 23 on Assessors Plat 7 in North Smithfield, Rhode Island (see Appendix K hereto). Performing Settling Defendants shall use best efforts to secure from such persons for the United States and the State and their representatives, including, but not limited to, EPA and its contractors, as well as the Performing Settling Defendants:

(i) access to the property for the purpose of conducting any activity related to this Settlement Agreement and Consent Decree including, but not limited to, those activities listed in Paragraph 28, and (ii) the right to enforce any land and water use restrictions (collectively "Access"). For purposes of this Subparagraph "best efforts" includes the payment of reasonable sums of money in consideration of Access. If any Access required

by this Subparagraph is not obtained within 45 days of the date of lodging of this Settlement Agreement and Consent Decree, or within 45 days of the date EPA notifies the Performing Settling Defendants in writing that additional Access beyond that previously secured is necessary, Performing Settling Defendants shall promptly notify the United States and the State in writing, and shall include in that notification a summary of the steps Performing Settling Defendants have taken to attempt to obtain Access. The United States or the State may, as it deems appropriate, assist Performing Settling Defendants in obtaining Access or the property use restrictions. Performing Settling Defendants shall reimburse the United States or the State, in accordance with the procedures in Section XVII (Reimbursement in Satisfaction of Claims) and Appendix G, for all costs incurred by the United States or the State in obtaining Access and property use restrictions including, but not limited to, attorneys fees and the amount paid for the access rights and property use restrictions. Such costs shall be considered Future Response Costs.

b. To the extent that the Site or any other property to which Access is required for the implementation of this Consent Decree, or for which land or water use restrictions are needed to ensure the remedial action set forth in the ROD is or remains protective, or to protect the public health, or the environment during or after implementation of the remedial action set forth in the ROD, is owned or controlled by persons other than a

Settling Defendant including, but not limited to, Lot 23 (see Appendix K hereto), Performing Settling Defendants shall use best efforts to secure from such persons the filing of the access easements and restrictive easements described below. For the purposes of this Subparagraph "best efforts" includes the payment of reasonable sums of money in consideration of the filing of these easements. Performing Settling Defendants shall, within 90 days of entry of this Settlement Agreement and Consent Decree, submit to EPA for review and approval, after a reasonable opportunity for review and comment by the State, the following:

i. A draft easement that grants to the United States, the State, the Performing Settling Defendants, and/or their contractors and representatives (A) a right of access, running with the land and binding on successors-in-title, for the purpose of conducting any activity related to this Settlement Agreement and Consent Decree including, but not limited to, those activities listed in Paragraph 28, and (B) a right, running with the land and binding on successors-in-title, to enforce any land and water use restrictions. The easement shall be enforceable under the laws of the State of Rhode Island, shall be in substantially the same form as the sample easement that is included as Appendix G to the Rhode Island Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (1996), shall be free and clear of all prior liens and encumbrances, and shall comply with the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

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

Within fifteen (15) days of EPA's approval and acceptance of the easement, Performing Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, file the easement with the Recorder's Office or

Registry of Deeds or other appropriate office, of the county(ies) where the land is located. Within thirty (30) days of filing the easement, Performing Settling Defendants shall provide EPA with a title insurance policy or other final title evidence acceptable under the Standards, and the original recorded easement or a certified copy thereof showing the clerk's recording stamps. The Performing Settling Defendants shall provide a copy of such documents to the State at the same time as they are provided to EPA. If any easement required by this Subparagraph is not submitted to EPA for review and approval within 90 days of the date of entry of this Consent Decree, Performing Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps Performing Settling Defendants have taken to attempt to obtain such easements. The United States or the State may, as it deems appropriate, assist Performing Settling Defendants in obtaining these access easements and restrictive easements. Performing Settling Defendants shall reimburse the United States or the State, in accordance with the procedures in Section XVIII (Reimbursement in Satisfaction of Claims) and Appendix G, for all costs incurred by the United States and the State in obtaining the easements including, but not limited to, attorneys fees and the amount paid to obtain the filing of the access easements and restrictive easements. Such costs shall be Future Response Costs. If EPA notifies Performing Settling Defendants in writing that additional access easements are required for implementation

of this Settlement Agreement and Consent Decree, or that additional restrictive easements are needed to ensure the remedial action set forth in the ROD is protective, or to protect the public health, or the environment during or after implementation of the remedial action set forth in the ROD, with respect to property that is not owned or controlled by any of the Settling Defendants, Performing Settling Defendants shall respond by following the procedure outlined in this Subparagraph as though the property had been identified in this Settlement Agreement and 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 the Settlement Agreement and Consent Decree. A violation of any access easement or restrictive easement filed pursuant to this Settlement Agreement and Consent Decree by a Settling Defendant shall be considered a violation of this Consent Decree.

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

#### XI. REPORTING REQUIREMENTS

34. In addition to any other requirement of this Settlement Agreement and Consent Decree, Performing Settling Defendants shall submit to EPA and the State 1 copy each of written monthly (unless EPA determines this frequency should be modified)

progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Settlement Agreement and Consent Decree during the previous relevant time period; (b) include a summary of all results of sampling and tests and all other data received or generated by Performing Settling Defendants or their contractors or agents in the previous relevant time period; (c) identify all work plans, plans and other deliverables required by this Settlement Agreement and Consent Decree that were completed and submitted during the previous relevant time period; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next three months and provide other information relating to the progress of the Work; (e) include any modifications to the work plans or other schedules that Performing Settling Defendants have proposed to EPA or that have been approved by EPA; and (f) if appropriate, describe all activities undertaken in support of Community Relations during the previous relevant time period and those to be undertaken in the next three months. Upon entry of this Decree, Performing Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Settlement Agreement and Consent Decree (unless otherwise determined by EPA) until EPA notifies the Performing Settling Defendants pursuant to Paragraph 49.b. of Section XV (Certification of Completion). If requested by EPA or the State, Performing Settling Defendants shall also

provide briefings for EPA and the State to discuss the progress of the Work.

35. The Performing Settling Defendants shall notify EPA of any change in the schedule described in the progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity unless EPA determines that a shorter time is needed.

36. Upon the occurrence of any event during performance of the Work that Performing Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, and/or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Performing Settling Defendants shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator designated pursuant to Section XIII (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 Unit, Region I, United States Environmental Protection Agency, and shall also notify the State Project Coordinator. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

37. Within 20 days of the onset of such an event, Performing Settling Defendants shall furnish to Plaintiffs a written report, signed by the Performing Settling Defendants' Project

Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Performing Settling Defendants shall submit a report setting forth all actions taken in response thereto.

38. Performing Settling Defendants shall submit 3 copies of all plans, reports, and data required by the SOW and the Post Closure Operation and Maintenance Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Performing Settling Defendants shall simultaneously submit 3 copies of all such plans, reports and data to the State.

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

## XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

40. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Settlement Agreement and Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall in writing: (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, notifying Settling Defendants of deficiencies and of EPA's decision that EPA will modify the submission; or (e) any combination of the above. If EPA does not approve the submission pursuant to (a) above, EPA may require the Performing Settling Defendants to participate in such meetings as EPA determines are necessary to modify the submission to comply with the requirements of this Decree and the SOW. If EPA determines, upon receipt of any plan, report or other item required to be submitted for approval pursuant to this Consent Decree, that such plan, report or other item is materially incomplete, in addition to taking any action set forth in (a) through (e) above, EPA may notify the Performing Settling Defendants of the material omissions and such plan, report or other item shall not be deemed to have been submitted to EPA for purposes of complying with the requirements of this Consent Decree and SOW.

41. In the event of approval, approval upon conditions, modification by EPA, or disapproval pursuant to Paragraph 40(a), (b), (c), (d), or (e), Performing Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXI (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 40(c), (d) or (e) and the submission has a material defect, EPA retains

its right to seek stipulated penalties, as provided in Section XXII.

42. Notwithstanding the receipt of a written notice of disapproval pursuant to Paragraph 40(d), Performing Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Performing Settling Defendants of any liability for stipulated penalties under Section XXII (Stipulated Penalties) for any deficient portion.

43. All plans, reports, and other items required to be submitted to EPA under this Settlement Agreement and Consent Decree shall, upon approval or modification by EPA, be enforceable under this Settlement Agreement and 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 Settlement Agreement and Consent Decree, the approved or modified portion shall be enforceable under this Settlement Agreement and Consent Decree. To the extent EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Settlement Agreement and Consent Decree, the Settling Defendants may not challenge their obligation to perform, or disclaim responsibility for, any action required by such plan, report or other item except as authorized by Section XXI (Dispute Resolution).

XIII. PROJECT COORDINATORS

44. Within 20 days of lodging of this Settlement Agreement and Consent Decree, Performing Settling Defendants, the State and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Performing Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Performing Settling Defendants' Project Coordinator shall not be an attorney for any of the Performing Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities. In addition, EPA will designate, in writing, a Geographic Section Chief who will be responsible for all the findings of approval/disapproval, and comments on all major project deliverables.

45. 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

Settlement Agreement and 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, conduct or direct any Work required by this Settlement Agreement and 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.

46. EPA's Project Coordinator, the State's Project Coordinator and the Performing Settling Defendants' Project Coordinator will meet or confer by phone, on a monthly basis, and/or as scheduled by EPA's Project Coordinator or the State's Project Coordinator.

#### XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

47. Within 90 days of lodging of this Settlement Agreement and Consent Decree, Performing Settling Defendants shall establish and maintain financial security in the amount of \$10 million by a demonstration that one or more of the Performing Settling Defendants satisfy the substantive requirements of 40 C.F.R. Part 264.143(f). Performing Settling Defendants shall make such initial demonstration by submitting a letter, from a

corporate official with appropriate environmental responsibilities, that illustrates compliance with and includes documentation that establishes the substantive requirements of 40 C.F.R. Part 264.143(f). Upon request by EPA or a significant change in the financial condition of the Performing Settling Defendant maintaining the financial assurance, the Performing Settling Defendants shall, within 30 days of such request or change in financial condition, submit a letter from and Form 10-K of another Performing Settling Defendant to demonstrate financial assurance as required by this Section. EPA shall review the 10-K in comparison to the substantive requirements of 40 C.F.R. Part 264.143(f), to determine whether the financial assurance requirements of this Section have been met. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines, in its unreviewable discretion, that the 10-K is inadequate to provide the financial assurances required pursuant to this Section, Performing Settling Defendants shall, within 30 days of receipt of written notice of EPA's determination, obtain and present to EPA for approval, after opportunity for review and comment by the State, another form of financial assurance as specified by EPA. Performing Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Settlement Agreement and Consent Decree.

**XV. CERTIFICATION OF COMPLETION****48. Completion of the Remedial Action**

a. Within 90 days after Performing Settling Defendants conclude that the Remedial Action has been fully performed and all Performance Standards have been attained for three consecutive years, including Performance Standards for air emissions under open vent conditions for three consecutive years after discontinuance of the operation of the gas collection and thermal treatment system, and the remedy is protective, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA and the State. If, after the pre-certification inspection, the Performing Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained for three consecutive years, including Performance Standards for air emissions under open vent conditions for three consecutive years after discontinuance of the operation of the gas collection and thermal treatment system, and the remedy is protective, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Performing Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Settlement Agreement and

Consent Decree. The written report shall include as-built drawings (incorporated by reference) signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or the Performing Settling Defendants' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Settlement Agreement and Consent Decree or that the Performance Standards have not been achieved as described in this Subparagraph, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities consistent with the Settlement Agreement and Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Performing Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this

Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (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 fully performed in accordance with this Settlement Agreement and Consent Decree and that the Performance Standards have been achieved as described in Subparagraph a, EPA will so certify in writing to Performing Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Settlement Agreement and Consent Decree, including, but not limited to, Section XXIII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Settlement Agreement and Consent Decree.

49. Completion of the Work

a. Within 90 days after Performing Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, EPA and the State. If, after the pre-certification inspection, the Performing Settling Defendants still believe that the Work has been fully performed, Performing Settling Defendants shall submit a written report by a registered



professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Settlement Agreement and Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or the Performing Settling Defendants' Project Coordinator:

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

If, after completion of 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 Settlement Agreement and Consent Decree, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Settlement Agreement and Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Performing Settling Defendants and Owner 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 XXI (Dispute Resolution).

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

#### XVI. EMERGENCY RESPONSE

50. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Settling Defendants and Owner Settling Defendants shall, subject to Paragraph 51, 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 immediately notify the EPA Emergency Response Unit, Region I. Within 5 days after the notification, the Performing Settling Defendants and Owner Settling Defendants shall provide to EPA notice, in writing, of the actions taken to prevent, abate or minimize the release or threat of release. Performing Settling Defendants and Owner Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available

authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW and approved by EPA. In the event that Performing Settling Defendants and Owner Settling Defendants decline to undertake any response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, Performing Settling Defendants and Owner Settling Defendants shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement in Satisfaction of Claims) and Appendix G.

51. Nothing in the preceding Paragraph or in this Settlement Agreement and Consent Decree shall be deemed to limit any authority of the United States, or the State, to take, direct, or order all appropriate action or to 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.

**XVII. REIMBURSEMENT IN SATISFACTION OF CLAIMS**

52. a. Except as provided in Paragraph 2.A of Appendix G, within 75 days of the effective date of this Settlement Agreement and Consent Decree, Performing Settling Defendants and Owner Settling Defendants jointly shall make payments totalling the sum of \$2,000,000 (two million) plus Interest. The payments required by this Paragraph shall be made in accordance with the instructions set forth in Appendix G hereto. Interest shall

begin to accrue as of September 30, 1996. The parties agree that this sum is for reimbursement of Past Response Costs and Natural Resource Damages for resources under the trusteeship of DOI and the State (except State groundwater). This sum also includes reimbursement in satisfaction of the claim pursuant to Section 106(b)(1) of CERCLA through the date of lodging of this Settlement Agreement and Consent Decree. Although Performing Settling Defendants and Owner Settling Defendants are aware of and acknowledge that settlement funds are being allocated by Plaintiffs as provided in Appendix G, Performing Settling Defendants and Owner Settling Defendants continue to deny that any allocation to claims pursuant to Section 106(b)(1) of CERCLA is appropriate; Performing Settling Defendants and Owner Settling Defendants acknowledge that the provisions of Paragraph 1 of this Settlement Agreement and Consent Decree apply to Appendix G.

b. Plaintiffs acknowledge prior receipt of \$60,000 paid by the Funding Entities on behalf of the Cannons Defendants in satisfaction of Plaintiffs' claims for Past and Future Response Costs. Such funds are currently held in a reimbursable account at EPA's Cincinnati Financial Management Center. Upon entry of this Settlement Agreement and Consent Decree, EPA will transfer such funds to the EPA Hazardous Substances Superfund.

53. a. Performing Settling Defendants and Owner Settling Defendants shall reimburse the United States and the State for all Oversight Costs and all Future Response Costs not inconsistent with the National Contingency Plan incurred by the

United States and the State, except that reimbursement of Oversight Costs incurred as a result of overseeing the Work conducted pursuant to Section IV.C of the SOW shall be limited to the amounts specified in Appendix H of this Settlement Agreement and Consent Decree. On a periodic basis, the United States and the State will each send Performing Settling Defendants and Owner Settling Defendants a bill requiring payment that consists of 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, DOJ, the State, and their contractors in connection with the Site. Performing Settling Defendants and Owner Settling Defendants shall make all Oversight Costs and Future Response Costs payments within 30 days of their receipt of each bill requiring payment. Payment of Oversight Costs associated with activities conducted pursuant to Section IV.C of the SOW pursuant to this Paragraph shall not be subject to Dispute Resolution under Section XXI, or otherwise subject to judicial review. Payment of Future Response Costs and all other Oversight Costs shall be subject to Dispute Resolution under Section XXI. The Performing Settling Defendants and Owner Settling Defendants shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substances Superfund" and referencing the EPA Region and Site/Spill ID # 01-30, and DOJ case number 90-11-2-449B. The Performing Settling Defendants and Owner Settling Defendants

shall forward the certified check(s) to EPA Region I, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251 and shall send copies of the check and transmittal letter to the United States as specified in Section XXVIII (Notices and Submissions). The Performing Settling Defendants and Owner 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 "General Treasurer" (for deposit in the Environmental Response Fund). The Performing Settling Defendants and Owner Settling Defendants shall send the certified check(s) to the Office of the Director, RIDEM, 9 Hayes Street, Providence, RI 02908.

b. Performing Settling Defendants and Owner Settling Defendants may contest payment of any Future Response Costs and any Oversight Costs other than those associated with activities conducted pursuant to Section IV.C of the SOW under Paragraph 53(a) 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, provided such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVIII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs or Oversight Costs and the basis for objection. In the event of an

objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs or Oversight Costs to the United States or the State in the manner described in Paragraph 53.a. Simultaneously, within 30 days of receipt of the bill, the Settling Defendants shall establish an interest bearing escrow account in a federally insured bank duly chartered in the State of Rhode Island and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs or Oversight Costs. The Performing Settling Defendants shall send to the United States, as provided in Section XXVIII (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Future Response Costs or Oversight Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XXI. If the United States or the State prevails in the dispute, within 5 days of the resolution of the dispute, the Performing Settling Defendants shall pay the sums due (with accrued interest) to the United States or the State, if State costs are disputed, in the manner described in Paragraph 53.a. If the Settling Defendants prevail concerning any portion of the contested costs, the Performing

Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the State, if State costs are disputed, in the manner described in Paragraph 53.a; Performing Settling Defendants and Owner Settling Defendants, as appropriate, shall be disbursed any balance of the escrow account. Unless a determination is made under this Paragraph in conjunction with the Dispute Resolution procedures of Section XXI that the Settling Defendants are not obligated to pay contested portions of the bill, the time for payment of the contested portions of the bill shall remain the original payment due date and interest shall accrue on any unpaid portions of the bill from the original payment due date. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Performing Settling Defendants' and Owner Settling Defendants' obligation to reimburse the United States and the State for their Future Response Costs and Oversight Costs.

54. In the event that the payments required by Paragraph 52.a. are not made within 75 days of the effective date of this Settlement Agreement and Consent Decree or the payments required by Paragraph 53 are not made within 30 days of the Settling Defendants' receipt of the bill, Performing Settling Defendants and Owner Settling Defendants shall pay Interest on the unpaid balance at the rate established pursuant to Section 107(a) of



CERCLA, 42 U.S.C. § 9607. The Interest to be paid on the payments required by Paragraph 52.a shall begin to accrue as of September 30, 1996. The Interest on Future Response Costs and Oversight Costs shall begin to accrue on the date of the Performing Settling Defendants' receipt of the bill. Interest shall accrue at the rate specified through the date of the Settling Defendants' payment. The Performing Settling Defendants shall pay a one-percent handling charge and a six percent penalty charge to the United States Treasury, if the Performing Settling Defendants have not paid the full amount required by Paragraph 52.a. within 90 days of the effective date of the Decree, or the full amount required by Paragraph 53 within 90 days of Performing Settling Defendants' receipt of the bill. The Performing Settling Defendants, with respect to payments due pursuant to Paragraph 52.a., shall pay a one-percent handling charge and a six percent penalty charge to the General Treasurer, State of Rhode Island, if the Performing Settling Defendants have not paid the full amounts required by such provisions of this Decree within 90 days of the effective date of the Decree. The Performing Settling Defendants shall also pay such handling and penalty charges to the General Treasurer, State of Rhode Island if the full amount required by Paragraph 53 is not paid within 90 days of Performing Settling Defendants' receipt of the bill. Payments 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.

XVIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

55. As part of the resolution of this matter an environmentally beneficial project for the purchase of interests in property within or in proximity to the Blackstone River Valley National Heritage Corridor shall be implemented in accordance with the provisions of Appendix G. The Site is located within or in proximity to the Blackstone River Valley National Heritage Corridor.

XIX. INDEMNIFICATION AND INSURANCE

56. 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. Performing Settling Defendants and Owner 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 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 Settlement Agreement and 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 Performing Settling Defendants and Owner Settling Defendants agree to pay the United States and the State all costs they incur including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or 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 Settlement Agreement and 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 Settlement Agreement and 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 Performing Settling Defendants notice of any claim for which the United States or State plans to seek indemnification pursuant to Paragraph 56.a, and shall consult with Performing Settling Defendants prior to settling such claims.

57. Settling Defendants waive all claims against the United States and the State and their officials, agents, employees, contractors, subcontractors and representatives 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, Performing Settling Defendants shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of 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.

58. No later than 30 days after lodging of this Settlement Agreement and Consent Decree, Performing Settling Defendants shall secure, and shall maintain for the duration of this Settlement Agreement and Consent Decree comprehensive general liability insurance and automobile insurance with limits of one (1) million dollars, combined single limit naming as additional insured the United States and the State. In addition, for the duration of this Settlement Agreement and Consent Decree, Performing Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing Settling Defendants in furtherance of this Settlement Agreement and Consent Decree. No later than 45 days

after lodging of this Settlement Agreement and Consent Decree, Performing Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. If requested by EPA, Performing Settling Defendants shall resubmit such certificates and copies of policies within 21 days of such request. If Performing Settling Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Performing Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Performing Settling Defendants shall submit certificates and copies of policies documenting the insurance required by this Settlement Agreement and Consent Decree within 21 days of any change to the source or amount of any component of such insurance.

XX. FORCE MAJEURE

59. "Force majeure," for purposes of this Settlement Agreement and Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants or of any entity controlled by Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents or may delay or prevent the performance of any obligation under this Settlement Agreement and Consent Decree despite Settling Defendants' best efforts to fulfill the

obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

60. If any event occurs or has occurred that delays or may delay the performance of any obligation under this Settlement Agreement and Consent Decree, whether or not caused by a force majeure event, the Performing Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Office of Site Remediation and Restoration, EPA Region I, within 48 hours of when Settling Defendants first knew that the event might cause a delay. Within 5 days thereafter, Performing Settling Defendants shall provide in writing to EPA and the State: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Performing Settling Defendants' rationale for attributing such delay to a force

majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Performing Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Performing Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was or will be attributable to a force majeure event. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of any circumstance of which, Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

61. 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 Settlement Agreement and Consent Decree that are affected by the force majeure event will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure

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

62. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution), they shall do so no later than 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 59 and 60, 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 Settlement Agreement and Consent Decree identified to EPA and the Court.



**XXI. DISPUTE RESOLUTION**

63. Unless otherwise expressly provided for in this Settlement Agreement and Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Settling Defendants arising under or with respect to this Settlement Agreement and Consent Decree. The dispute resolution procedures of this Section shall also be the exclusive mechanism to resolve disputes between the State and Settling Defendants arising under or with respect to this Settlement Agreement and Consent Decree, which disputes shall be limited to those relating to payment of Past and Future Response Costs and assessment of stipulated penalties by the State. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 64 through 70. The State may participate in such dispute resolution proceedings to the extent specified in Paragraphs 64 through 70. Disputes between the State and Settling Defendants to which EPA is not a party are governed by Paragraph 71. 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.

64. Any dispute which arises under or with respect to this Settlement Agreement and Consent Decree shall in the first instance be the subject of informal good faith negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute

arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen upon the receipt of the written Notice of Dispute by the other parties to the dispute.

65. 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 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 68 or 69.

66. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA, after reasonable opportunity for review and comment by the State, will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. The State may also serve a Statement of Position within the fourteen-day time limit set forth above in this Paragraph. EPA's

Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 68 or 69.

67. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 68 or 69, 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 68 or 69.

68. 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 Settlement Agreement and Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Settlement Agreement and Consent Decree. Nothing in this Settlement Agreement and Consent Decree shall be construed to allow any dispute by Settling Defendants regarding 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 and Restoration, EPA Region I, after reasonable opportunity for review and comment by the State, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 68.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 68.c. and 68.d.

c. Any administrative decision made by EPA pursuant to Paragraph 68.b. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Settlement Agreement and Consent Decree. The United States may file within 30 days a response to Settling Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office of Site Remediation and Restoration is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 68.a.

69. 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 65, the Director of the Office of Site Remediation and Restoration, EPA Region I, after reasonable opportunity for review and comment by the State, will issue a final decision resolving the dispute. The Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Settlement Agreement and Consent Decree. The United States may file within

30 days a response to Settling Defendants' notice of judicial appeal.

b. Notwithstanding Paragraph T of Section I (Background) of this Settlement Agreement and Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

70. 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 Settlement Agreement and 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 80. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement Agreement and 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 XXII (Stipulated Penalties).

71. Disputes Solely between the State and Settling Defendants. Dispute resolution shall be available to the State under this Settlement Agreement and Consent Decree only for disputes about failure to pay Past and Future Response Costs owed to the State. Such disputes 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 64 through 70, except that each reference to EPA shall read as a reference to RIDEM, each reference to the Director of the Office of Site Remediation and Restoration, EPA Region I, shall be read as a reference to Director, RIDEM, 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.

#### XXII. STIPULATED PENALTIES

72. Settling Defendants as a group shall be liable for stipulated penalties in the amounts set forth in Paragraphs 73 and 74 to the United States and the State for failure to comply with the requirements of this Settlement Agreement and Consent Decree specified below, unless excused under Section XX (Force Majeure). The breadth of the stipulated penalties set forth in Paragraphs 73 and 74 reflect the limited nature of the remaining work to be performed at the Site. The United States shall receive 90% of stipulated penalties received, and the State shall receive 10% of stipulated penalties received. "Compliance" by Settling Defendants shall include completion of the activities under this Settlement Agreement and Consent Decree or any work plan or other plan approved under this Settlement Agreement and Consent Decree identified below in accordance with all applicable requirements of law, this Settlement Agreement and Consent Decree, the SOW, and any plans or other documents approved by EPA

pursuant to this Settlement Agreement and Consent Decree and within the specified time schedules established by and approved under this Settlement Agreement and Consent Decree.

73. The following stipulated penalties shall be payable per violation per day to the United States and the State for the Performing Settling Defendants' failure to submit a timely or adequate Remedial Action Report or Completion of Work Report. The following stipulated penalties shall also be payable per violation per day to the United States and the State for the Performing Settling Defendants' and Owner Settling Defendants' failure to timely provide access or institutional controls as required by Section X hereof (Access and Institutional Controls), and the Performing Settling Defendants' failure to timely perform Completion of the Remedial Action, Completion of the Work, sampling, or any potential future Work activities pursuant to Section VII of the SOW and failure to timely submit Post Closure Operation and Maintenance Reports.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,000	1st through 20th day
\$ 3,500	21st through 30th day
\$10,000	31st day and beyond

74. The following stipulated penalties shall be payable per violation per day to the United States and the State for any noncompliance except as identified in Paragraph 73:

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



75. In the event that EPA or the State assumes performance of a portion or all of the Work pursuant to Paragraph 93 of Section XXIII (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable for a stipulated penalty in the amount of \$150,000.

76. 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 XII (EPA Approval of Plans), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Performing Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Office of Site Remediation and Restoration, EPA Region 1, under Paragraph 68 or 69 of Section XXI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Performing Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XXI (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous

accrual of separate penalties for separate violations of this Settlement Agreement and Consent Decree. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement and Consent Decree.

77. Following EPA's determination, after reasonable opportunity for review and comment by the State, that Settling Defendants have failed to comply with a requirement of this Settlement Agreement and Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA and 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 for the obligations specified below in Paragraph 81, has notified the Settling Defendants of a violation.

78. All penalties owed to the United States and/or the State under this section shall be due and payable within 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 XXI (Dispute Resolution). All payments to the United States under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Region 1, Attn: Superfund Accounting, P.O. Box 360197M,

Pittsburgh, PA 15251, and shall reference the EPA Region and Site/Spill ID #01-30. All payments to the State under this Section shall be made payable to "General Treasurer" (for deposit in the Environmental Response Fund) and shall be mailed to Director, RIDEM, 9 Hayes Street, Providence, RI 02908. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and/or the State as provided in Section XXVIII (Notices and Submissions).

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

80. Penalties shall continue to accrue as provided in Paragraph 76 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay only the amount of the accrued penalties determined by the Court to be owed to the United States and the State within 60

days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

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

81. State Assessment of Stipulated Penalties. Assessment of stipulated penalties solely by the State shall be governed in the following manner. Following the State's determination that Settling Defendants have failed to pay Past Response Costs or Future Response Costs owed to the State as required by Section XVII (Reimbursement of Response Costs, Compensation for Natural Resource Damages and Payment of Penalty), the State may give Settling Defendants written notification of the same and describe the noncompliance. The provisions for liability, assessment and payment of the stipulated penalties referenced in this Paragraph shall be the same as provided in Paragraphs 76 through 80 of this Section, except that each reference to EPA shall read as a reference to RIDEM, 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. The State shall receive 90% of the stipulated penalties received pursuant to this paragraph and the United States shall receive 10% of the stipulated penalties received pursuant to this paragraph.

82. If Settling Defendants fail to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties owed it/them, 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 78 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607, with respect to the United States, and at the same rate with respect to the State.

83. Nothing in this Settlement Agreement and 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, and as to the State, pursuant to R.I. G.L. Chapters 23-19.1. Provided, however, that the United States and the State shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty has been collected hereunder, except in the case of a willful violation of the Settlement Agreement and Consent Decree.

XXIII. COVENANTS NOT TO SUE BY PLAINTIFFS

84. a. In consideration of the actions that have been and will be performed and the payments that will be made by Performing Settling Defendants and Owner Settling Defendants under the terms of the Settlement Agreement and Consent Decree, and except as specifically provided in Paragraphs 85, 86, 88 and 89 of this Section, the United States, on behalf of the Administrator of EPA, the Secretary of the Interior, and the Administrator of the National Oceanic and Atmospheric Administration, covenants not to sue or to take other civil or administrative action against Performing Settling Defendants and Owner Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for reimbursement of Past Response Costs, Oversight Costs and Future Response Costs; compensation for damage to Natural Resources under the trusteeship of the Secretary of the Interior or the Administrator of the National Oceanic and Atmospheric Administration; for implementation of the Remedial Action relating to the Site; and for alleged non-compliance with the Unilateral Administrative Order through the date of the entry of this Settlement Agreement and Consent Decree. In consideration of the actions that have been and will be performed and the payments that will be made by Performing Settling Defendants and Owner Settling Defendants under the terms of the Settlement Agreement and Consent Decree, and except as specifically provided in Paragraphs 88, 89 and 90 of this Section, the State covenants not to sue or take other civil or administrative action against

Performing Settling Defendants and Owner Settling Defendants pursuant to Section 107 of CERCLA, and R.I.G.L. Chapters 42-17.1, 23-19.1 23-18.9, 23-23, 46-12, and 46-13.1, for reimbursement of Past Response Costs, Oversight Costs, and Future Response Costs; compensation for damage to Natural Resources under the trusteeship of the Director of RIDEM except for groundwater; and with respect to Landfill & Resource Recovery, Inc., and Truk-Away of R.I., Inc. for payment of contempt penalties for violations of the State Court Order through the date of entry of this Settlement Agreement and Consent Decree. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by the United States and the State of the payments required by Paragraph 52 of Section XVII (Reimbursement in Satisfaction of Claims) and Appendix G. 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 48.b. of Section XV (Certification of Completion). These covenants not to sue are conditioned upon the complete and satisfactory performance by Performing Settling Defendants and Owner Settling Defendants of their obligations under this Settlement Agreement and Consent Decree. These covenants not to sue extend only to the Performing Settling Defendants and Owner Settling Defendants and do not extend to any other person.

b. In consideration of the payments that have been made by the Cannons Defendants, and except as specifically provided in

Paragraphs 85, 86, 88(a) - (f) and 89 of this Section, the United States, on behalf of the Administrator of EPA, the Secretary of the Interior, and the Administrator of the National Oceanic and Atmospheric Administration, covenants not to sue or to take other civil or administrative action against the Cannons Defendants pursuant to Section 106 or 107(a) of CERCLA for reimbursement of Past Response Costs, Oversight Costs and Future Response Costs, compensation for damage to Natural Resources under the trusteeship of the Secretary of the Interior and the Administrator of the National Oceanic and Atmospheric Administration, and implementation of the Remedial Action relating to the Site. In consideration of the payments that have been made by the Cannons Defendants, and except as specifically provided in Paragraphs 88(a) - (f), 90 and 91, the State also covenants not to sue or take other civil or administrative action against the Cannons Defendants pursuant to Section 107 of CERCLA and R.I.G.L. Chapters 42-17.1, 23-19.1 23-18.9, 23-23, 46-12 and 46-13.1 for reimbursement of Past Response Costs, Oversight Costs and Future Response Costs, and compensation for damage to Natural Resources under the trusteeship of the Director of RIDEM except for groundwater. Except with respect to future liability, these covenants not to sue shall take effect upon entry of this Settlement Agreement and Consent Decree by the Court. 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 48.b. of Section XV (Certification



of Completion). These covenants not to sue extend only to the Cannons Defendants and do not extend to any other person. In order to induce the Plaintiffs to enter into this settlement, J. Robert Cannon and J. Scott Cannon each, by their signatures hereto, affirms under penalty or perjury, to the best of his knowledge and belief, the following:

(1) J. Robert Cannon and J. Scott Cannon have each provided to EPA all information requested in his respective possession, custody or control that relates in any way to the generation, treatment, transportation, storage or disposal of materials at or in connection with the Site;

(2) J. Robert Cannon and J. Scott Cannon have each provided EPA with all material information of which each is aware relating to his finances, assets, and all other matters related to the Cannons Defendants' resources available to reimburse the Plaintiffs' response costs at the Site;

(3) The information described in Subparagraphs (1) and (2) above is materially true and accurate; and

(4) With respect to the information provided to EPA by J. Robert Cannon and J. Scott Cannon as described in Subparagraph (2) above, neither J. Robert Cannon nor J. Scott Cannon possesses or knows of any other documents or information that would suggest that either one has in his possession, custody or control, other assets, income or any interests at all in property of any kind that could be used to reimburse the EPA Hazardous Substances Superfund or the State for response costs

incurred or to be incurred at the Site. This agreement may be voided by the Plaintiffs, and the covenant not to sue granted by the Plaintiffs shall become void and of no effect, in the event that the information provided by the Cannons Defendants referred to in this Paragraph is not substantially true, complete and correct. Any payments made by the Cannons Defendants under this Settlement Agreement and Consent Decree shall be credited against any future liabilities that may be imposed pursuant to this paragraph.

85. United States' Pre-certification reservations.

Notwithstanding any other provision of this Settlement Agreement and Consent Decree, the United States reserves, and this Settlement Agreement and 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:

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

and EPA determines, based on these previously unknown conditions or information together with any other relevant information,

that the Remedial Action is not protective of human health or the environment.

86. United States' Post-certification reservations.

Notwithstanding any other provision of this Settlement Agreement and Consent Decree, the United States reserves, and this Settlement Agreement and 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:

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

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

87. For purposes of Paragraph 85, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision for the Site, the administrative record supporting the Record of

Decision, and the information received by EPA pursuant to the requirements of the UAO or included in the post-ROD administrative record pursuant to the requirements of the NCP up to the date of lodging of this Settlement Agreement and Consent Decree. For purposes of Paragraph 86, the information previously received by and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, the information received by EPA pursuant to the requirements of the UAO or included in the post-ROD administrative record pursuant to the requirements of the NCP and any information received by EPA pursuant to the requirements of this Settlement Agreement and Consent Decree prior to Certification of Completion of the Remedial Action.

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

a. claims based on a failure by Settling Defendants to meet a requirement of this Settlement Agreement and Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

c. liability arising from the future disposal of Waste Materials at the Site, other than as provided in the ROD, the Work or otherwise ordered by EPA;

d. criminal liability;

e. liability for other violations of federal or state law;

f. liability for costs that the United States may incur related to the Site but are not within the definition of Future Response Costs or Oversight Costs;

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Section VII; and

h. liability for remediation of groundwater related to the Site.

89. Reservations concerning natural resource injury.

Notwithstanding any other provision of this Decree, the United States and the State, on behalf of any of their respective natural resource trustees, reserve the right to institute proceedings against Performing Settling Defendants and Owner Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to the United States or the

State, as appropriate, at the date of lodging of this Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources, or (2) information received after the date of lodging of this Settlement Agreement and Consent Decree which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to the United States or the State, as appropriate, at the date of the lodging of this Settlement Agreement and Consent Decree.

90. State's Pre-certification reservations.

Notwithstanding any other provisions of this Settlement Agreement and Consent Decree, the State, on behalf of the Director of RIDEM, reserves, and this Settlement Agreement and 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 (a) under Section 107 of CERCLA, 42 U.S.C. § 9607, or (b) under R.I.G.L. Chapters 42-17.1, and 23-19.1, seeking to compel all or any of the Settling Defendants (1) to perform other response activities or actions at the Site, or (2) to reimburse the State for additional response costs for response activities or actions at the Site, to the extent that EPA has determined that such activities or actions required 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:

a. conditions at the Site, previously unknown to the State, are discovered or become known to the State, or

b. information previously unknown to the State is received by the State, in whole or in part,

and the RIDEM Director, or his or her delegate determines, pursuant to R.I.G.L. Chapters 42-13.1, and 23-19.1, based on these previously unknown conditions or this information together with any other relevant information that the response actions taken are inadequate to protect the public health 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.

91. State's Post-certification Reservations.

Notwithstanding any other provision of this Settlement Agreement and Consent Decree, the State, on behalf of the Director of RIDEM, reserves, and this Settlement Agreement and 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: (a) under Section 107 of CERCLA, 42 U.S.C. § 9607, or (b) under R.I.G.L. Chapters 42-13.1, and 23-19.1, seeking to compel all or any of the Settling Defendants (1) to perform other response activities or actions at the Site, or (2) to reimburse the State for additional response costs for response activities or actions at the Site, to the extent that EPA has

determined that such activities or actions required 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:

- a. conditions at the Site, previously unknown to the State, are discovered to become known after Certification of Completion, or
- b. information previously unknown to the State is received by the State, in whole or in part, after Certification of Completion,

and the Director of RIDEM, or his or her delegate, determines pursuant to R.I.G.L. Chapters 42-17.1, and 23-19.1, based on these previously unknown conditions or this information together with any other relevant information, that the response actions taken are inadequate to protect the public health or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

92. For purposes of Paragraph 90, the information and the conditions known to the State shall include only that information and those conditions set forth in the Record of Decision for the Site, the administrative record supporting the Record of Decision, and the information received by EPA pursuant to the requirements of the UAO or included in the post-ROD administrative record pursuant to the requirements of the NCP up



to the date of the lodging of this Settlement Agreement and Consent Decree. For purposes of Paragraph 91, the information previously received by and the conditions known to the State shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, the information received by EPA pursuant to the requirements of the UAO or included in the post-ROD administrative record pursuant to the requirements of the NCP and any information received by the State pursuant to the requirements of this Settlement Agreement and Consent Decree prior to Certification of Completion of the Remedial Action.

93. In the event EPA determines that Performing Settling Defendants and/or Owner 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. Performing Settling Defendants and/or Owner Settling Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Such dispute shall be resolved on the administrative record. 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 XVII (Reimbursement of Response Costs) and Appendix G.

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

XXIV. COVENANTS BY SETTLING DEFENDANTS

95. Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, including any agency, department or instrumentality of the United States or the State, with respect to the Site or this Settlement Agreement and Consent Decree, including, but not limited to, the following:

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 107, 111, 112, 113 or otherwise any other provision of law;

b. 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 Section 106(b)(2) except that Performing Settling Defendants and Owner Settling Defendants reserve their rights to bring a claim pursuant to Section 106(b)(2) of CERCLA should the United States issue to the Performing Settling Defendants and Owner Settling Defendants any unilateral administrative order in connection with

the Site pursuant to Section 106 of CERCLA for response actions not covered by this Settlement Agreement and Consent Decree;

c. any claim under CERCLA Sections 106, 107 or 113 related to the Site;

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

e. any claim under the Constitution of the United States, the Tucker Act, 28 U.S.C. § 1491, or at common law, arising out of or relating to access to, institutional controls on or other restrictions on the use or enjoyment of, or response activities undertaken at the Site or at any parcels subject to the liens filed by EPA pursuant to Section 107 of CERCLA in Book 128, Page 717 and in Book 128, Page 723 of the Registry of Deeds for Providence County, Rhode Island; or

f. 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.

96. The Performing Settling Defendants reserve, and this Settlement Agreement and Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Performing Settling Defendants plans or activities) that are brought pursuant to any statute other than

CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

97. Nothing in this Settlement Agreement and 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).

98. a. Upon lodging of this Settlement Agreement and Consent Decree, Settling Defendants who are plaintiffs in the civil action captioned Avnet, Inc. v. Amtel, Inc., C.A. 91-0383-B (D.R.I.), shall join the United States in seeking a stay of the appeal captioned as Avnet, Inc. v. Amtel, Inc., No. 95-1619 (1st Cir.), until such time as the Settlement Agreement and Consent Decree is entered or otherwise finally acted upon by the Court.

b. Within 5 days after entry of this Settlement Agreement and Consent Decree, Settling Defendants who are plaintiffs in the civil action captioned Avnet, Inc. v. Amtel, Inc., C.A. 91-0383-B (D.R.I.), shall file Motions to Dismiss, with prejudice, such civil action and the associated appeal. Each party shall bear its own costs associated with such filings. Such Settling Defendants who are not plaintiffs in such civil action agree not to oppose such motion to dismiss, and further agree not to bring any additional claims against the United States pursuant to any legal theory or statute, which in any way challenges the validity of, or the contribution protection afforded the settling parties to, the Administrative Order by Consent, U.S. EPA Docket No. I-91-1032, dated January 30, 1992.

c. Within 10 days after lodging of this Settlement Agreement and Consent Decree, Landfill & Resource Recovery, Inc. and RIDEM agree to file a notice in the State Court regarding the lodging of this Settlement Agreement and Consent Decree in the form set forth in Appendix F to this Settlement Agreement and Consent Decree. Within 10 days after entry of this Settlement Agreement and Consent Decree by the Court, Landfill & Resource Recovery, Inc. and RIDEM agree to file a joint motion to modify the State Court Order and to dismiss with prejudice the civil action captioned Landfill & Resource Recovery, Inc. v. Department of Environmental Management of the State of Rhode Island, C.A. No. 81-4091 (R.I. Sup. Ct.). Each party shall bear its own costs associated with such filings.

XXVI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

99. Nothing in this Settlement Agreement and Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Settlement Agreement and 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, except that Settling Defendants agree not to institute proceedings

against, or seek contribution or cost recovery of any kind from, parties to the Administrative Order by Consent in EPA Docket No. I-91-1032, dated January 30, 1992.

100. With regard to claims for contribution against Settling Defendants for reimbursement of the United States' and the State's Past Response Costs, payment of the United States' and the State's Future Response Costs, payment of Oversight Costs, compensation for damage to Natural Resources under the trusteeship of the Secretary of the Interior, and the Administrator of the National Oceanic and Atmospheric Administration, and the Director of RIDEM (except groundwater), and performance of the Work, the Parties hereto agree that except as provided in Paragraph 101 of this Settlement Agreement and Consent Decree, Settling Defendants are entitled to such protection from contribution actions or claims to the extent provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

101. Notwithstanding any other provision of this Settlement Agreement and Consent Decree to the contrary, Performing Settling Defendants and Owner Settling Defendants reserve, and this Settlement Agreement and Consent Decree is without prejudice to, the right to maintain or institute an action or actions either in court or in arbitration against the other for any claims arising from or associated with the Site or any work relating thereto, including without limitation, claims relating to obligations or defenses to such obligations under any agreement previously

entered into between the parties and claims for contribution pursuant to Section 113(f)(1) of CERCLA.

102. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Settlement Agreement and Consent Decree they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim. The obligation to provide notice under this Paragraph shall not extend to a suit or claim brought by one or more of the Settling Defendants against an insurance company seeking coverage for the costs incurred or to be incurred pursuant to the UAO or this Settlement Agreement and Consent Decree.

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

104. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants 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 XXIII (Covenants Not to Sue by Plaintiffs).

XXVI. ACCESS TO INFORMATION

105. Settling Defendants shall make available to Plaintiffs, upon request and within a reasonable period of time, 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 the UAO or this Settlement Agreement and 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 Plaintiffs, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

106. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under the UAO or this Settlement Agreement and 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.

a. 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 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 UAO or this Settlement Agreement and Consent Decree shall be withheld on the grounds that they are privileged.

107. 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.

XXVII. RETENTION OF RECORDS

108. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b. of Section XV (Certification of Completion of Work), each Settling Defendant shall preserve and retain all original and non-identical copies 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 UAO or 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 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b. of Section XV (Certification of Completion of the Work), Settling Defendants shall also instruct their contractors and agents to preserve all original and non-identical copies of documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

109. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State in writing at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to EPA or the State. 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 Settling Defendants assert such a privilege, they shall comply with the requirements set forth in Paragraph 106. No documents, reports or other information created or generated pursuant to the requirements of the UAO or this Settlement Agreement and Consent Decree shall be withheld on the grounds that they are privileged. Settling Defendants shall retain all documents claimed to be privileged for an additional three years or until the final resolution of any dispute concerning the claim of privilege, whichever is longer.

110. Each Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of 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 and Section 3007 of RCRA.

#### XXVIII. NOTICES AND SUBMISSIONS

111. Whenever, under the terms of this Settlement Agreement and 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 mailed 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 Settlement Agreement and 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: DOJ # 90-11-2-449B

and

Director  
Office of Site Remediation and Restoration  
United States Environmental Protection Agency  
Region I  
JFK Federal Building  
Boston, MA 02203-2211

As to EPA:

Anna F. Krasko  
EPA Remedial Project Manager/L&RR Superfund Site  
United States Environmental Protection Agency  
Region I  
JFK Federal Building (HSV-CAN5)  
Boston, MA 02203-2211

As to the State:

Warren F. Angell, II  
Supervising Engineer  
Division of Site Remediation  
RIDEM  
291 Promenade Street  
Providence, RI 02908

and:

Claude Cote  
RIDEM  
Office of Legal Services  
235 Promenade Street, 4th Floor  
Providence, RI 02908

As to the Settling Defendants:

Settling Defendants' Project Coordinator:  
de Maximis, Inc.  
Attn: Jack McBurney  
186 Center Street, Suite 290  
Clinton, NJ 08809

Performing Settling Defendants:  
Ropes & Gray  
Attn: Colburn T. Cherney  
1301 K Street, N.W.  
Washington, D.C. 20005

Owner Settling Defendants:  
Visconti & Boren, Ltd.  
Attn: Girard R. Visconti  
Dante J. Giammarco  
55 Dorrance Street  
Providence, RI 02903

The Cannons Defendants:  
J. Robert Cannons  
1343 Falmouth Road  
Centerville, MA 02632

**XXIX. EFFECTIVE DATE**

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

**XXX. RETENTION OF JURISDICTION**

113. This Court retains jurisdiction over both the subject matter of this Settlement Agreement and Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Settlement Agreement and 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 Settlement Agreement and Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XXI (Dispute Resolution) hereof. The Plaintiffs and the Cannons Defendants agree that the Cannons Engineering Corporation has properly been revived for purposes of this lawsuit.

**XXXI. APPENDICES**

114. The following appendices are attached to and incorporated into this Settlement Agreement and 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 Performing Settling Defendants.

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

"Appendix F" is the form for notification to the State Court of the lodging of this settlement.

"Appendix G" is the Payment Procedures and Allocation.

"Appendix H" is the payment schedule for Oversight Costs.

"Appendix I" is the form for Notice of Consent Decree.

"Appendix J" is the License Agreement.

"Appendix K" is the set of descriptions of known property for which access and institutional controls are required.

#### XXXII. COMMUNITY RELATIONS

115. If requested by EPA, Settling Defendants shall cooperate with EPA and the State in providing information regarding the Work to the public. If 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.

#### XXXIII. MODIFICATION

116. Modification to schedules specified in this Settlement Agreement and Consent Decree for completion of the Work or non-material modifications to the Scope of Work may be made by agreement of EPA, after reasonable opportunity for review and comment by the State, and the Performing Settling Defendants.

All such modifications shall be made in writing and will become effective upon filing with the Court by the United States.

117. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Performing Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Such modifications shall become effective upon approval by the Court. In the case of modifications to the SOW that would affect attainment of Performance Standards required by the Settlement Agreement and Consent Decree or the SOW, written notification to and approval of the State shall also be required. No material modifications to the Settlement Agreement and Consent Decree shall be made without written notification to and written approval of the United States, the State and Settling Defendants. Such modifications shall become effective upon approval by the Court.

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

XXXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

119. This Settlement Agreement and Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. §



50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Settlement Agreement and Consent Decree disclose facts or considerations which indicate that the Settlement Agreement and Consent Decree is inappropriate, improper, or inadequate. The State may withdraw or withhold its consent to the entry of this Settlement Agreement and Consent Decree if comments received disclose facts or considerations which show that the Settlement Agreement and Consent Decree violates state law. The United States reserves the right to challenge in Court the State's withdrawal from the Settlement Agreement and 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 Settlement Agreement and Consent Decree, the State reserves its right to withdraw from this Settlement Agreement and Consent Decree. Settling Defendants consent to the entry of this Settlement Agreement and Consent Decree.

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

XXXV. SIGNATORIES/SERVICE

121. Each undersigned representative of a Settling Defendant to this Settlement Agreement and Consent Decree, the Assistant Attorney General for Environment and Natural Resources of the Department of Justice, and the Director of RIDEM certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and Consent Decree and to execute and legally bind such party to this document.

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

123. 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 Settlement Agreement and Consent Decree.

Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local

rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc., et al., relating to the Landfill & Resource Recovery Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_

1/28/97

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

Date: \_\_\_\_\_


\_\_\_\_\_  
Cynthia S. Huber  
Senior Attorney  
Environmental Enforcement Section  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-5273

Sheldon Whitehouse  
United States Attorney  
District of Rhode Island

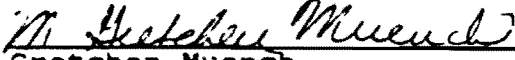
Michael Iannotti  
Assistant United States Attorney  
District of Rhode Island  
Westminster Square Building  
10 Dorrance Street  
Providence, RI 02903

United States v. Landfill & Resource Recovery, Inc:  
Settlement Agreement and Consent Decree Signature Page

Date: 9/20/96

  
\_\_\_\_\_  
John P. DeVillars  
Regional Administrator  
U.S. Environmental Protection  
Agency  
Region I  
JFK Federal Building  
Boston, MA 02203-2211

Date: 9/30/96

  
\_\_\_\_\_  
Gretchen Muench  
Senior Enforcement Counsel  
U.S. Environmental Protection  
Agency  
Region I  
JFK Federal Building  
Boston, MA 02203-2211

FINAL DRAFT - 9/16/96


125

CONFIDENTIAL: FOR SETTLEMENT PURPOSES ONLY

United States v. Landfill & Resource Recovery, Inc.  
Settlement Agreement and Consent Decree Signature Page

FOR THE STATE OF RHODE ISLAND

Date: Sept. 23 1996

  
R. Timothy  
Director  
Rhode Island  
Environmental  
9 Hayes Street  
Providence,

*This page  
will be  
replaced w/  
an orig.*

The Undersigned party enters into the Settlement Agreement and Consent Decree in the matter of the United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

Witness:

Kathy J. Kettelle

Landfill & Resource Recovery, Inc.

By David J. Kavan  
Its President  
Vice

Date: 10/2/96, 1996

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

Girard R. Visconti, Esquire  
Visconti & Boren Ltd.  
55 Dorrance Street  
Providence, RI 02903

OUT OF COURT SETTLEMENT AGREEMENT AND CONSENT DECREE  
The Undersigned party enters into the Settlement Agreement and Consent Decree in the matter of the United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

Witness:

Truk-Away of R.L., Inc.

Kathy J. Kettelle

By Charles S. Z. Z. Z.  
Its President

Date: Oct 2, 1996

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

Girard R. Visconti, Esquire  
Visconti & Boren Ltd.  
55 Dorrance Street  
Providence, RI 02903

The Undersigned party enters into the Settlement Agreement and Consent Decree in the matter of the United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

Witness:

Kathy J. Kettelle

Charles S. Wilson  
Charles S. Wilson

Date: Oct 2, 1996

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

Girard R. Visconti, Esquire  
Visconti & Boren Ltd.  
55 Dorrance Street  
Providence, RI 02903



The Undersigned party enters into the Settlement Agreement and Consent Decree in the matter of the United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

Witness:

Kathy J. Kottelle

David Wilson  
David Wilson

Date: 10/2/96, 1996

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

Girard R. Visconti, Esquire  
Visconti & Boren Ltd.  
55 Dorrance Street  
Providence, RI 02903

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

Avnet, Inc.

Date: 9/6/96

David R. Birk

David R. Birk  
Senior Vice President  
Avnet, Inc.  
80 Cutter Mill Road  
Great Neck, New York 11021


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

Name:	David R. Birk
Title:	Senior Vice President
Address:	Avnet, Inc. 80 Cutter Mill Road Great Neck, New York 11021
Tel. Number:	(516) 466-7000

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United states v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

FOR: General Dynamics Corporation

Date: 9/9/96

  
Daniel S. Hapke, Jr.  
Assistant Secretary  
75 Eastern Point Road  
Groton, CT 06340

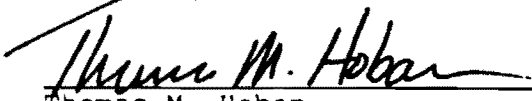
Agent Authorized to Accept Service on Behalf of Above-signed Party:

United States Corporation Company  
84 State Street  
Boston, MA 021098  
(617) 523-3388

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of The United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

For: United Dominion Industries, Inc.

By:

  
Thomas M. Hoban

Its Attorney

Date: September 11, 1996

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

Thomas M. Hoban  
Attorney at Law  
313 South Main Street, rm. 313  
Telephone: (603) 643-6906  
Facsimile: (603) 643-5922

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

FOR POLAROID CORPORATION \*/

Date: August 30, 1996

Richard F. deLima

Richard F. deLima  
Vice President, Secretary and  
General Counsel  
549 Technology Square  
Cambridge, MA 02139

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

Sheldon W. Rothstein  
Senior Corporate Attorney  
575 Technology Square  
Cambridge, MA 02139  
617-386-2793

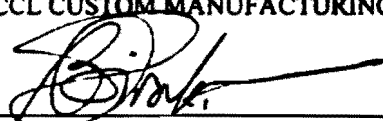
---

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States.

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

FOR: CCL CUSTOM MANUFACTURING, INC.

Date: \_\_\_\_\_

  
Bohdan I. Sirota  
Secretary  
CCL CUSTOM MANUFACTURING, INC.  
6133 North River Road, Suite 800  
Rosemont, Illinois 60018  
USA

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

Bohdan I. Sirota  
CCL Industries Inc.  
105 Gordon Baker Road  
Willowdale, Ontario  
Canada M2H 3P8

tel. (416) 756-8500

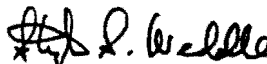
~~c/o CCL Industries Inc.~~  
105 Gordon Baker Road  
Willowdale, Ontario  
Canada M2H 3P8

**CONFIDENTIAL: FOR SETTLEMENT PURPOSES ONLY**

**THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc. relating to the Landfill & Resource Recovery Superfund Site.**

**FOR STANLEY-BOSTITCH, INC.**

**Date: September 13, 1996**



---

**Stephen S. Weddle  
Secretary  
1000 Stanley Drive  
New Britain, CT 06053**


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

**Name: The Corporation Trust Co.  
Address: Corporation Trust Center  
1209 Orange Street  
Wilmington, DE 19801  
Tel. No. (302) 658-7581/7583**

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recover, Inc., relating to the Landfill & Resource Recovery Superfund Site.

CORNING INCORPORATED

Date: 9/16/96

By:   
David G. Lyons  
Engineering Manager  
Environmental and Engineering  
Services

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

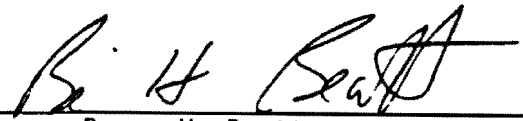
Name: Colburn T. Cherney, Esq.  
Title: \_\_\_\_\_  
Address: Ropes & Gray, 1301 K St., NW, Washington, DC 20005  
Telephone: (202) 626-3900



THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

For The Dexter Corporation

Date: September 16 , 1996

  
Name: Bruce H. Beatt  
Title: Vice President, General Counsel & Secretary  
Address: One Elm Street  
Windsor Locks, CT 06096  
Tel.: (860) 292-7601

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

Name: c/o C T Corporation  
Title: ---  
Address: One Commercial Plaza  
Hartford, CT 06103

Tel. Number: (860) 724-9044

\*/ A separate signature page must be signed by each corporation individual or other legal entity that is settling with the United States.

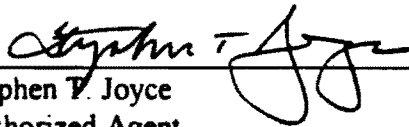
dxlrcds1.doc

CONFIDENTIAL: FOR SETTLEMENT PURPOSES ONLY

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

FOR Waste Management of Massachusetts, Inc.  
(Goditt & Boyer, Inc.)

Date: September 16, 1996

  
\_\_\_\_\_  
Stephen P. Joyce  
Authorized Agent  
Waste Management, Inc.  
4 Liberty Lane West  
Hampton, NH 03842  
Phone 603-929-3490  
Fax 603-929-3152

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

Name: Michael Brennan, Esquire  
Title: Group Environmental Counsel  
Address: Waste Management, Inc  
Three Greenwood Square  
3329 Street Road  
Bensalem, PA 19020  
Phone 215-633-2450

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States

DRAFT - 8/26/96

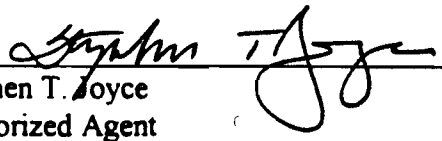
124

CONFIDENTIAL: FOR SETTLEMENT PURPOSES ONLY

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

FOR Clean Harbors of Braintree, Inc.,  
formerly known as Recycling Industries, Inc.

Date: September 16, 1996

  
\_\_\_\_\_  
Stephen T. Joyce  
Authorized Agent  
Waste Management, Inc.  
4 Liberty Lane West  
Hampton, NH 03842  
Phone 603-929-3490  
Fax 603-929-3152

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


Name: Michael Brennan, Esquire  
Title: Group Environmental Counsel  
Address: Waste Management, Inc.  
Three Greenwood Square  
3329 Street Road  
Bensalem, PA 19020  
Phone: 215-633-2450

\*/ A separate signature page must be signed by each corporation, individual or other legal entity that is settling with the United States

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

FOR BOSTON EDISON COMPANY

Date: 9/19/96

  
\_\_\_\_\_  
Ronald A. Ledgett  
Senior Vice President  
Boston Edison Company  
800 Boylston Street  
Boston, MA 02199

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

Name: Jeffrey N. Stevens, Esq.  
Title: Senior Counsel  
Address: Boston Edison Company, 800 Boylston St., Boston, MA 02199  
Tel. No.: (617) 424-3955

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

*PKV*  
*4-19-96* FOR OLIN CORPORATION COMPANY, INC./

Date: 9/20/96

Carl M. Richards  
Name  
Title DIRECTOR, ENVIRONMENTAL  
Address REMEDIATION  
9401 MAGICAL VIEW  
CHATTANOOGA, TN 37421

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

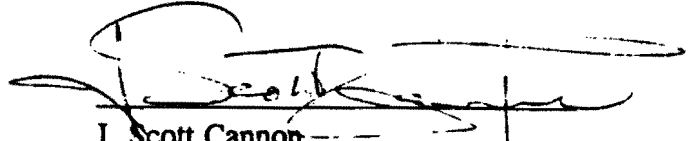
Name: Jerry Ronecker, Esq.  
Title:  
Address: Busch & Eppenger  
100 North Broadway, Suite 1300  
St. Louis, MO 63102  
Tel. Number: 314-622-0634

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consent Decree in the matter of United States v. Landfill & Resource Recovery, Inc., relating to the Landfill & Resource Recovery Superfund Site.

Date:

Sept. 24, 1996

J. Scott Cannon,



J. Scott Cannon  
1343 Falmouth Road  
Centerville, MA 02632  
(508) 775-1489

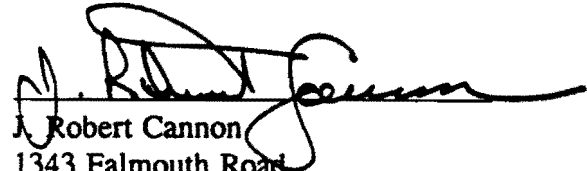
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: J. Scott Cannon  
Address: 1343 Falmouth Road  
Centerville, MA 02632  
(508) 775-1489

THE UNDERSIGNED PARTY enters into this Settlement Agreement and Consenst Decree in  
thematter of United Sttes v. Landfill & Resource Recover, Inc., relating to the Landfill &  
Resource Recovery Superfund Site.

J. Robert Cannon,

Date: 9/25/96

  
J. Robert Cannon  
1343 Falmouth Road  
Centerville, MA 02632  
(508) 775-1489

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

Name: J. Robert Cannon  
Address: 1343 Falmouth Road  
Centerville, MA 02632  
(508) 775-1489

# **L&RR Settlement Agreement and Consent Decree:**

## **Appendix G**



## APPENDIX G

### PAYMENT PROCEDURES AND ALLOCATION

1. Except as provided in Paragraph 2-A of this Appendix G, within 75 days of the effective date of this Settlement Agreement and Consent Decree, Performing Settling Defendants and Owner Settling Defendants jointly shall:

A. Pay to the United States \$675,000, plus Interest, in reimbursement of Past Response Costs, by Electronic Funds transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing the U.S.A.O. file number, the EPA Region and Site/Spill ID #01-30, and DOJ case number 90-11-2-449-B. Payment shall be made in accordance with instructions provided by the United States to the Performing Settling Defendants after lodging of the Settlement Agreement and Consent Decree. Payment by EFT must be received at the DOJ lockbox bank by 4:00 P.M. (Eastern Time) to be credited on that day. Performing Settling Defendants shall send written notice of the EFT(s) to the United States as specified in Section XXVIII (Notices and Submissions) and to the Regional Hearing Clerk, EPA Region I, J.F.K. Federal Building, Boston, MA 02203. Interest on all payments under this Appendix G shall begin to accrue as of September 30, 1996.

B. Pay to the State \$200,000, plus Interest. Payment shall include: (1) any remaining funds in the trust fund that has been established pursuant to State court order in connection with Landfill & Resource Recovery, Inc. v. Department of Environmental

Management of the State of Rhode Island, C.A. No. 81-4091 (R.I. Sup. Ct.), and that are released to the State from the trust fund pursuant to the actions required by Paragraph 98.c of the Settlement Agreement and Consent Decree; plus (2) a certified check or checks for the difference between the amount, if any, that is released to the State from the trust fund pursuant to the actions required by Paragraph 98.c of the Settlement Agreement and Consent Decree and the sum of \$200,000 plus Interest made payable to "General Treasurer" (for deposit in the Environmental Response Fund), in reimbursement of Past Response Costs incurred by the State. The Performing Settling Defendants shall send the certified check(s) to Office of the Director, RIDEM, 235 Promenade Street, Providence, RI 02908.

C. Pay to the United States \$400,000, plus Interest in satisfaction of the United States' claim for civil penalties, pursuant to CERCLA Section 106(b)(1), for the Performing Settling Defendants' and Owner Settling Defendants' alleged noncompliance with the Unilateral Administrative Order through the date of lodging of this Settlement Agreement and Consent Decree. Such payment shall be made in the form of a certified check or checks made payable to "EPA Hazardous Substances Superfund" and referencing the EPA Region and Site/Spill ID # 01-30, and DOJ case number 90-11-2-449B. The Performing Settling Defendants shall forward the certified check(s) to EPA Region I, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251 and shall send copies of the check and transmittal letter to the

United States as specified in Section XXVIII (Notices and Submissions).

D. Pay to the United States \$200,000, plus Interest for Natural Resource Damages, in the form of a certified check made payable to "U.S. Department of the Interior" and referencing Account Number 14X5198, DOJ number 90-11-2-449B, the USAO number, and the name of the Site, the Landfill & Resource Recovery, Inc. Site. The Performing Settling Defendants and the Owner 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

with a copy to:

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

and shall reference that the payment is for Natural Resource Damages for resources under the trusteeship of the Department of Interior ("DOI") and the State of Rhode Island with respect to the L&RR Site (except groundwater). Copies of the check paid pursuant to this subparagraph and any accompanying transmittal letter shall be sent to the United States and the State of Rhode Island as provided in Section XXVIII(Notices and Submittals).

DOI shall hold the funds recovered for Natural Resource Damages in an interest bearing account in its Natural Resource Damage Assessment and Restoration Fund, and such monies together

L&RR SETTLEMENT AGREEMENT AND CONSENT DECREE: APPENDIX G

with all interest accrued thereon shall only be spent for restoration and to reimburse past trustee assessment costs associated with the Site which expenditures shall be made in conformity with the provisions and procedures set forth in a Memorandum of Agreement to be entered into between DOI and the State of Rhode Island.

2. Supplemental Environmental Project ("SEP")

A. In accordance with Section XVIII of the Settlement Agreement and Consent Decree, a supplemental environmental project shall be performed that is comprised of acquisition of title to real property and/or conservation easements on real property in Rhode Island and located within or relating to the Blackstone River Valley National Heritage Corridor ("Corridor"). Performing Settling Defendants and Owner Settling Defendants shall implement this SEP through funding an escrow account to finance the acquisition of appropriate interests in real property. On or before January 7, 1997, Performing Settling Defendants and Owner Settling Defendants shall place into an interest bearing escrow account (the "Escrow"), \$525,000 plus Interest. The funds deposited in the Escrow and all interest earned on such funds shall be used after entry solely to acquire real property and conservation easements on real property in Rhode Island exclusively for the purposes of: creating new wetlands; protecting or enhancing existing wetlands; or protecting, restoring and improving wildlife habitat area involving wetlands within or relating to the Corridor consistent

with the objectives, values and purposes of the Blackstone River Valley Heritage Corridor Commission Act ("Act"), P.L. 99-647, 100 Stat. 3625, Section XVIII of the Settlement Agreement and Consent Decree and this Paragraph 2 of Appendix G. Upon the written approval of the United States through the Department of Justice, Performing Settling Defendants shall disburse Escrow monies in the approved amounts to the Rhode Island Department of Environmental Management's ("RIDEM") Division of Planning and Development to acquire the real property and/or conservation easements on real property consistent with this Appendix G. Other than for failure to timely fund the Escrow or to timely disburse funds from the Escrow, the Settling Defendants shall not be liable for stipulated penalties in connection with Paragraph 2.A, 2.B and 2.C of this Appendix G.

B. It is the expectation that: (1) within 90 days of entry of the Settlement Agreement and Consent Decree, title to a portion of the certain parcel of real property of approximately 38 acres known as the Lonsdale Drive-In located in Lincoln, Rhode Island will be acquired by and conveyed to the State of Rhode Island by RIDEM through its Division of Planning and Development and (2) conservation easements will be placed on such land. If: (1) EPA, DOI and RIDEM determine that acquisition of interests in the Lonsdale Drive-In property cannot be accomplished for a financially reasonable purchase price; (2) EPA, DOI, and RIDEM otherwise agree that such property should not be purchased; (3) or if any funds remain in the Escrow after the purchase of

interests in the Lonsdale Drive-In property, then upon approval of EPA and DOI, RIDEM through its Division of Planning and Development, shall purchase interests in other real property and/or conservation easements on real property located in the Corridor ("alternate environmental projects") from the list attached hereto as Attachment 1 until the full amount of the Escrow has been expended. RIDEM shall provide written monthly reports on the progress of implementing the SEP to the Department of Justice and EPA at the addresses set forth in Section XXVIII of the Settlement Agreement and Consent Decree and to DOI at the address set forth in Paragraph 1.D of this Appendix G. Such reports shall be submitted on or before the tenth day of each calendar month beginning the month after entry. The State shall use good faith efforts to complete the requirements of this SEP within twelve months of entry of the Settlement Agreement and Consent Decree.

C. The State of Rhode Island shall ensure that any property interests, including conservation easements, acquired pursuant to this SEP shall be maintained in perpetuity in a manner consistent with the objectives of the Act and the Settlement Agreement and Consent Decree. The State will hold title to such property interests; the State may transfer such interests to another public or private non-profit entity, but only if such entity agrees in writing to maintain the interest in a manner consistent with the objectives of the Act and the Settlement Agreement and Consent Decree and the deed(s)

transferring such interests provides for such conditions established on the use of the property and only after written approval of EPA and DOI of the transfer and the content of such deed(s).

D. The Performing Settling Defendants and Owner Settling Defendants certify that the payment of the funds to the Escrow and implementation of the SEP is not required under any state, local or federal law, regulation or order and that the SEP is not to be implemented pursuant to the terms of another consent decree or agreement to which the Performing Settling Defendants and Owner Settling Defendants are parties. The Performing Settling Defendants and Owner Settling Defendants further certify that they have not agreed to undertake or receive credit for undertaking, and are not presently negotiating to undertake the SEP described in this Appendix G and Section XVIII of the Settlement Agreement and Consent Decree in any other enforcement action.

E. Performing Settling Defendants and Owner Settling Defendants agree that any public or private statements, oral or written, making reference to the SEP required under the Settlement Agreement and Consent Decree shall include the following language: "This project was undertaken in connection with the settlement of a civil action brought by the United States on behalf of the United States Environmental Protection Agency."

APPENDIX G  
ATTACHMENT 1

List of alternative parcels:

	Location	Acreage	Plat/Lot
*	North Smithfield Slatersville, near Main Street/Rte. 5	approx. 10,000 sq. ft.	part of 4/34A
*	Lincoln Limerock area	21 acres	24/40
*	Lincoln Limerock area	125 acres	24/3
*	Lincoln Limerock area	25 acres	24/85
*	other parcels approved by RIDEM, EPA and DOI		