

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA and
STATE OF NEW JERSEY

Plaintiffs,

v.

THE CARBORUNDUM COMPANY,
COOPER INDUSTRIES, INC.,
CURTISS-WRIGHT CORPORATION,
E.I. DUPONT DE NEMOURS & COMPANY
ENGELHARD CORPORATION,
FLUID CONDITIONING PRODUCTS, INC.
KEARFOTT GUIDANCE & NAVIGATION
CORPORATION, INC.
SCHERING CORPORATION, and
SCOVILL, INC.

Defendants.

CIVIL ACTION NO.

CONSENT DECREE

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CALDWELL TRUCKING CERCLA RD/RA CONSENT DECREE

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I. BACKGROUND

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

B. The United States in its complaint seeks, inter alia:
(1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Caldwell Trucking Company

Superfund Site (the "Caldwell Trucking Site" or the "Site") in Fairfield, New Jersey, together with accrued interest; and (2) performance of studies and response work by the Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New Jersey (the "State") on July 27, 1993 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State of New Jersey 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, for reimbursement of costs incurred by the State relating to the Caldwell Trucking Site.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of the Interior and the Department of Commerce - National Oceanographic and Atmospheric Administration on July 26, 1993 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The Defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaint. Settling Defendants are settling to avoid the costs of litigation and do not intend the settlement to be indicative of any wrong or prior wrongdoing.

G. During the 1970s, personnel of the New Jersey Department of Environmental Protection ("NJDEP"), the predecessor agency to the New Jersey Department of Environmental Protection and Energy ("NJDEPE"), conducted various investigations of the Site. At some point during the mid 1970s, Caldwell Trucking Company, Inc. ("Caldwell Trucking Company") ceased depositing wastes in lagoons at the Site and began utilizing storage tanks.

H. 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. 40658;

I. In response to a release or a substantial threat of a release of hazardous substances at or from the Site and pursuant to its authority under Section 104 of CERCLA, 42 U.S.C. § 9604, from 1984 through 1986, EPA conducted a Remedial Investigation and Feasibility Study (the "Initial RI/FS") relating to the Site. The purpose of the Initial RI/FS was to, inter alia, identify types, quantities, and locations of contaminants in the soils and sludges at or near 222 Passaic Avenue, Fairfield, New Jersey, in the groundwater in a nearby contaminated municipal public water

supply well ("Municipal Well No. 7"), and in the groundwater threatening downgradient residential and commercial wells and to evaluate alternative remedial actions relating thereto. The RI/FS Report was completed in June, 1986.

J. On September 25, 1986, EPA issued a Record of Decision (the "1986 ROD") in which EPA selected an operable unit remedy for the soils and sludges at the 222 Passaic Avenue portion of the Site, for Municipal Well No. 7, and to address immediate concerns regarding use of contaminated or threatened residential and commercial groundwater wells downgradient of 222 Passaic Avenue ("Remedy I"). Remedy I, as selected in the 1986 ROD, called for several components, including (a) excavation and treatment of contaminated soils and sludges and disposal of treated soils and sludges in a secure landfill to be constructed at the Site in accordance with requirements promulgated under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq., (b) restoration of a potable water resource by providing air-stripping treatment for Municipal Well No. 7, and (c) provision of an alternate water supply for residents and commercial entities using groundwater wells affected or potentially affected by ground water contamination from the Site.

K. Between 1987 and 1989, EPA conducted a second Remedial Investigation/Feasibility Study (the "Second RI/FS") to investigate groundwater contamination at the Site and evaluate alternative remedial actions relating thereto. This RI/FS Report was completed in July 1989. Pursuant to Section 117 of CERCLA,

42 U.S.C. § 9617, EPA published notice of completion of the Feasibility Study and of the Proposed Plan for remedial action on August 18, 1989, in a major local newspaper of general circulation, The Caldwell Progress. EPA provided an opportunity for written and oral comments from the public on the proposed remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

L. On September 28, 1989, EPA issued a Record of Decision (the "1989 ROD") in which EPA selected a preferred operable unit remedy (the "Preferred Remedy II") and a contingent operable unit remedy (the "Contingency Remedy II") for the contaminated ground water at the Site. The major components of both the Preferred Remedy II and the Contingency Remedy II are (a) reduction of the contamination in the plume of contaminated ground water at the Site through a ground water pumping and treatment system, (b) installation of an enclosed drainage system for remediation of a seep and tributary to Deepavaal Brook, (c) installation of monitoring wells for monitoring of Municipal Well No. 6 and Municipal Well No. 8, and (d) sealing wells impacted by contamination from the Caldwell Trucking site. The difference between the preferred and contingency remedies is the scope of the pumping and treating remedy.

M. NJDEPE and its predecessor participated in reviewing and evaluating the information provided in the Initial and Second

RI/FSSs for the Site and, further, reviewed the proposed 1986 and 1989 RODs. NJDEPE and its predecessor have also engaged in other enforcement and investigatory activities in connection with the Site.

N. In 1989, EPA implemented part of Remedy I by connecting 55 residential properties and nine commercial establishments to the municipal water supply.

O. In October 1990, the Township of Fairfield declined the well-head treatment system that had been selected in the 1986 ROD for Municipal Well No. 7. Instead it closed Municipal Well No. 7 and arranged for an alternative water supply. As a result of the Township of Fairfield's decision, EPA decided to delete the Municipal Well No. 7 well-head treatment remedial component from Remedy I and issued an Explanation of Significant Differences (the "May 1991 ESD") explaining this change. Notice of the May 1991 ESD was published in The Caldwell Progress on May 30, 1991.

P. On February 17, 1993, EPA issued a second Explanation of Significant Differences (the "February 1993 ESD") concerning Remedy I, which explained changes to the excavation, treatment, and landfill component of Remedy I made by EPA to provide a protective remedy for the amounts and levels of contaminants found during remedial design investigations and to comply with applicable land disposal restrictions promulgated under RCRA. Notice of the February 1993 ESD was published in The Caldwell Progress on February 18, 1993.

Q. On April 19, 1993, pursuant to Section 106(a) of CERCLA, EPA issued Administrative Order Index No. II-CERCLA-93-0102 (the "Soils Remediation AO") to Caldwell Trucking Company, the Carborundum Company, Cooper Industries, Inc./McGraw Edison, Inc., Curtiss-Wright Corporation, E.I. Dupont De Nemours & Company, Fluid Conditioning Products, Inc., Kearfott Guidance & Navigation Corporation, Inc., Okon Corporation, Rxon Technology Corporation/Little Falls Ltd., Schering Corporation/Schering-Plough Corporation, and Scovill, Inc., requiring those companies to perform the excavation, treatment, and landfill component of Remedy I.

R. On June 29, 1993, pursuant to Section 106(a) of CERCLA, EPA issued Administrative Order Index No. II-CERCLA-93-0104 (the "Ground Water Studies AO") to Baureis Realty Company, Caldwell Trucking Company, the Carborundum Company, Cooper Industries, Inc./McGraw Edison, Inc., Curtiss-Wright Corporation, E.I. Dupont De Nemours & Company, Engelhard Corporation, Fluid Conditioning Products, Inc., General Hose Products Company, Kearfott Guidance & Navigation Corporation, Inc., Okon Corporation, Rxon Technology Corporation/Little Falls Ltd., Schering Corporation/Schering-Plough Corporation, and Scovill, Inc., requiring those companies to perform certain groundwater remediation design investigation studies described therein.

S. On August 12, 1993, EPA issued an ESD concerning Remedy II ("Remedy II ESD"), in which EPA explained that Remedy II would be the contingency Remedy II selected in the 1989 ROD. This

remedy includes limited pumping and treating of the ground water to contain the contaminant plume, remediation of the seep and the closing of private wells in the area. EPA also explained two changes: the provision in the 1989 ROD for monitoring the water quality in the municipal wells will be deleted from Remedy II because the municipality has closed its wells, and the seep will be remediated by use of the pump and treat system rather than by covering the seep. Notice of the August 1993 ESD was published in The Caldwell Progress on September 2, 1993.

T. NJDEPE and its predecessor concurred in the 1986 and 1989 RODs, as revised by the 1991 and 1993 ESDs.

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

V. Solely for the purposes of Section 113(j) of CERCLA, the Remedy II Remedial Action selected by the 1989 ROD, as revised by the Remedy II ESD, and the Remedy II Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

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

Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

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

III. PARTIES BOUND

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

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person

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

IV. DEFINITIONS

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

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

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

C. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

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

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

F. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State incur in (a) reviewing or developing plans, reports and other items pursuant to this Consent Decree, the Soils Remediation AO, and/or the Ground Water Studies AO in order to assure that the remedial designs and remedial actions thus developed for this Site protect the public health and welfare and the environment, (b) monitoring the Remedy II Work, the Soils Remediation AO Work, and/or the Ground Water Studies AO Work, or (c) otherwise implementing, supervising, or

enforcing this Consent Decree, the Soils Remediation AO, and the Ground Water Studies AO, 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, and Paragraph 85 of Section XXII. Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States and the State of New Jersey in connection with the Site between March 1, 1993 and the effective date of this Consent Decree and all interest on the Past Response Costs from March 15, 1993 to the effective date of this Consent Decree. Costs described above which were or are paid for by the State shall include salary, additives and fringe benefits to the extent allowed for pursuant to N.J.A.C. 7:26C-1.1 et seq. Future Response Costs do not include claims against the New Jersey Spill Compensation Fund and the New Jersey Landfill Facility Contingency Fund which have not been resolved by the date of entry of this Consent Decree.

G. "Ground Water Studies AO" shall mean Administrative Order Index No. II-CERCLA-93-0104 issued by EPA on June 29, 1993, pursuant to Section 106(a) of CERCLA, to Baureis Realty Company, Caldwell Trucking Company, the Carborundum Company, Cooper Industries, Inc./McGraw Edison, Inc., Curtiss-Wright Corporation, E.I. Dupont De Nemours & Company, Engelhard Corporation, Fluid Conditioning Products, Inc., General Hose Products Company, Kearfott Guidance & Navigation Corporation, Inc., Okon

Corporation, Rexon Technology Corporation/Little Falls Ltd., Schering Corporation/Schering-Plough Corporation, and Scovill, Inc., requiring those companies to perform certain groundwater remediation design investigation studies described therein, and attached here as Appendix VI.

H. "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.

I. "Natural Resource Damages" means damages, including costs of damages assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Caldwell Trucking Site.

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

K. "NJDEPE" shall mean the New Jersey Department of Environmental Protection and Energy and its predecessor and successor departments or agencies.

L. "On-site" shall mean the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

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

N. "Parties" shall mean the United States, the State of New Jersey, and the Settling Defendants.

O. "Passaic River" shall mean the Passaic River and does not include Deepavaal Brook or any other tributaries to the Passaic River.

P. "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 and paid with regard to the Site prior to March 1, 1993. Costs described above which were paid for by the State shall include Spill Fund claims and salary, additives and fringe benefits to the extent allowed for pursuant to N.J.A.C. 7:26C-1.1 et seq.

Q. "Plaintiffs" shall mean the United States and the State of New Jersey.

R. "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).

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

T. "Remedy II Performance Standards" shall mean those discharge standards, standards of control, and other substantive

requirements, criteria or limitations set forth in the Revised 1989 ROD or the Remedy II SOW.

U. "Remedy II Remedial Action" shall mean those activities, including Remedy II Remedial Construction, Remedy II Operation and Maintenance, and Ground Water Monitoring, to be undertaken by the Settling Defendants to implement the final plans and specifications submitted by the Settling Defendants pursuant to the Remedy II Remedial Design Work Plan, as approved and/or modified by EPA, and to implement the final Remedy II Operation and Maintenance Plan and the Ground Water Monitoring Plan, as approved and/or modified by EPA.

V. "Remedy II Remedial Construction" shall mean those activities, except for Remedy II Operation and Maintenance, to be undertaken by the Settling Defendants to implement the final plans and specifications submitted by the Settling Defendants pursuant to the Remedy II Remedial Design Work Plan, as approved and/or modified by EPA.

W. "Remedy II Remedial Construction Work Plan" shall mean the document submitted by the Settling Defendants pursuant to Paragraph 12.b of this Consent Decree and described more fully in Paragraph 12.c.

X. "Remedy II Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedy II Remedial Action and to design the private well sampling program, the restoration/ replacement of wetlands and uplands affected by Remedy II

activities, and the long term monitoring program relating to fish, wildlife and other biota in the Section of Deepavaal Brook, pursuant to the Remedy II Remedial Design Work Plan and the Remedy II SOW.

Y. "Remedy II Remedial Design Work Plan" shall mean the document submitted by the Settling Defendants pursuant to Paragraph 11.b of this Consent Decree and described more fully in Paragraph 11.c.

Z. "Remedy II Statement of Work" or "Remedy II SOW" shall mean the statement of work for implementation of the Remedy II Remedial Design, Remedy II Remedial Construction, and Remedy II Operation and Maintenance at the Site, and other items as set forth in Appendix II to this Consent Decree and any modifications made in accordance with this Consent Decree.

AA. "Remedy II Work" shall mean all activities relating to Remedy II response actions Settling Defendants are required to perform under this Consent Decree, including Remedy II Operation and Maintenance, ground water monitoring, private well sampling, restoration/replacement of wetlands and uplands adversely affected by Remedy II, and long term monitoring related to fish, wildlife, and other biota in the Section of Deepavaal Brook, except those required by Section XXVI (Retention of Records.)

BB. "Revised 1989 Record of Decision" or "Revised 1989 ROD" shall mean the EPA Record of Decision relating to groundwater contamination at the Site signed on September 28, 1989 by the Regional Administrator, EPA Region II, and all

attachments thereto, as revised by the Remedy II Explanation of Significant Differences ("Remedy II ESD") signed on August 12, 1993 and attached here as Appendix I.

CC. "Revised 1986 Record of Decision" or "Revised 1986 ROD" shall mean the EPA Record of Decision relating to soils remediation at the Site and other components signed on September 25, 1986 by the Regional Administrator, EPA Region II, and all attachments thereto, as revised by the May 1991 and February 1993 ESDs.

DD. "Sanitary Landfill Contingency Fund" shall mean the New Jersey Sanitary Landfill Facility Contingency Fund established pursuant to N.J.S.A. 13:1E-105 et seq.

EE. "Sanitary Landfill Facility Act" shall mean the New Jersey Sanitary Landfill Facility Closure and Contingency Fund Act, N.J.S.A. 13:1E-100 et seq.

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

GG. "Section of Deepavaal Brook" shall mean the section of Deepavaal Brook from the confluence of the brook with the Tributary to the confluence of the brook with the Passaic River.

HH. "Seep" shall mean the upwelling of water, including a spring, in Block 2502, Lot 26.01 and Block 2502, Lot 9, which discharges into the unnamed Tributary to Deepavaal Brook.

II. "Settling Defendants" shall mean those Parties identified in Appendix IV.

JJ. "Site" or "Caldwell Trucking Site" shall mean the Caldwell Trucking Company Superfund Site, located at or near 222 Passaic Avenue in Fairfield, New Jersey, and comprised of Lot 17, Block 2201 and Lots 7, 18 and 20, Block 2302 on the tax map for the Town of Fairfield and any real property onto or under which hazardous substances from the lots listed above have migrated, and which is depicted generally on the maps attached as Appendix III.

KK. "Soils Remediation AO" shall mean Administrative Order Index No. II-CERCLA-93-0102 issued by EPA on April 19, 1993, pursuant to Section 106(a) of CERCLA, to Caldwell Trucking Company, the Carborundum Company, Cooper Industries, Inc./McGraw Edison, Inc., Curtiss-Wright Corporation, E.I. Dupont De Nemours & Company, Fluid Conditioning Products, Inc., Kearfott Guidance & Navigation Corporation, Inc., Okon Corporation, Rexion Technology Corporation/Little Falls Ltd., Schering Corporation/Schering-Plough Corporation, and Scovill, Inc., requiring those companies to perform the excavation, treatment, and landfill component of Remedy I, and attached here as Appendix V.

LL. "Soils Remediation Performance Standards" or "Performance Standards for the work required under the Soils Remediation AO," as provided for in Paragraph 2.H of the Soils Remediation AO, shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations which are set forth in the following: (a) the 1986 ROD, (b) the February 1993 ESD, and (c) the Remedial Design for

the excavation, treatment, and landfill component of the remedial action selected by the Revised 1986 ROD.

MM. "Spill Act" shall mean the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23 et seq.

NN. "Spill Fund" shall mean the New Jersey Spill Compensation Fund established pursuant to N.J.S.A. 58:10-23.11i et seq.

OO. "State" shall mean the State of New Jersey in its capacity as trustee for natural resources and NJDEPE and its predecessor and successor departments and agencies only.

PP. "Tributary" shall mean the unnamed stream which discharges into Deepavaal Brook and which is identified on Figure 2 in Appendix III.

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

RR. "U.S. Supervisory Costs" shall mean, for purposes of this Consent Decree only, that portion of Future Response Costs incurred by EPA in monitoring and supervising the Settling Defendants' performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Consent Decree, as well as costs incurred in supervising the Settling Defendants' implementation of the Work; however, U.S. Supervisory Costs do not include, inter alia, Future Response Costs that are: (1) the costs of direct action by EPA to investigate, evaluate or monitor

a release, threat of release, or a danger posed by such release or threat of release; (2) the costs of litigation or other enforcement activities; (3) the costs of determining the need for or taking direct response actions by EPA to conduct a removal or remedial action at the Site, including but not limited to the cost of activities by EPA pursuant to Sections VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), and XVI (Emergency Response) of this Consent Decree; (4) the cost of undertaking the five-year review set forth in Section VIII (U.S. EPA Periodic Review) or otherwise determining whether or to what extent the Work has reduced the release or threat of release at the Site; (5) the cost of enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XX (Dispute Resolution); (6) the costs of securing access under Section X (Access); and (7) the costs incurred by the United States in performing the Work pursuant to Paragraph 85 of this Consent Decree.

SS. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) "hazardous substances" as defined in N.J.S.A. 58:10-23.11 b(k) and N.J.A.C. 7:1E-1.6 and 1.7.

TT. "Work" shall mean all activities relating to response actions Settling Defendants are required to perform under this Consent Decree, including the Remedy II Work, work required under

the Soils Remediation and Ground Water Studies UAOs, restoration/replacement of wetlands and uplands adversely affected by work required under the Soils Remediation AO, and long term soils remediation operations and maintenance, except those activities required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants and to reimburse response costs of the Plaintiffs.

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Remedy II Work in accordance with this Consent Decree, the Remedy II SOW, and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States and the State for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The Settling Defendants shall comply with EPA Administrative Orders Index No. II-CERCLA-93-0102 (Soils Remediation AO) and Index No. II-CERCLA-93-0104 (Ground Water Studies AO) and shall perform all work required under those orders in accordance with the terms of those orders. This obligation shall apply to all portions of such work that have not

been accomplished in compliance with the terms of those orders by the date of entry of this Consent Decree.

c. The obligations of Settling Defendants to finance and perform the Remedy II Work and to finance and perform the work required under the Soils Remediation AO and the Ground Water Studies AO and to pay amounts owed the United States and the State under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Exclusion

a. Except for implementation of the Revised 1989 ROD and the Remedy II SOW, nothing in this Consent Decree shall be construed to require the Settling Defendants to undertake response actions to remediate the Passaic River.

b. Notwithstanding any provisions of this Consent Decree, the United States and the State reserve all rights under applicable federal and state laws to perform response actions to remediate the Passaic River and to recover the costs of such response actions from, or to require the performance of such response actions by, any persons (not excluding the Settling Defendants) in a separate judicial and/or administrative action.

c. Notwithstanding any provisions of this Consent Decree, the Settling Defendants reserve all rights and defenses they may have to oppose any attempt by the United States or the

State to require them, except for implementation of the Revised 1989 ROD and the Remedy II SOW, to perform any response actions to remediate the Passaic River or to reimburse the United States or the State for the costs of such response actions. The Settling Defendants' agreement to execute this Consent Decree, implement the Revised 1989 ROD and the Remedy II SOW shall not be construed as admissions or declarations against interest, pursuant to Rules 801 and 804 of the Federal Rules of Evidence or any provision of the New Jersey Rules of Evidence, in any action brought by EPA or by any other party seeking further response actions by Settling Defendants regarding the remediation of the Passaic River.

8. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the Revised 1989 ROD and the Remedy II SOW and the Revised 1986 ROD and the Statement of Work attached to the Soils Remediation AO. The activities conducted pursuant to this Consent Decree, including but not limited to those conducted pursuant to the requirements of the Soils Remediation AO and the Ground Water Studies AO, if approved by EPA, shall be considered to be consistent with the NCP.

9. 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 that is conducted entirely on-site. However, work performed entirely on-site must conform with the applicable requirements and standards as if a permit were in place. Where any portion of the Work requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting solely from the permitting agency's failure to issue in a timely manner a permit required for the Work.

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

VI. PERFORMANCE OF THE REMEDY II WORK BY SETTLING DEFENDANTS AND OTHER ITEMS

10. Selection of Settling Defendants' Project Coordinator

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Remedy II Work by Settling Defendants), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of the Settling

Defendant's Project Coordinator, the selection of which shall be subject to disapproval by EPA. Within seven days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be their Project Coordinator. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Project Coordinator, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Project Coordinator performs, directs, or supervises any Remedy II Work under this Consent Decree or any other work required under Sections VI, VII, VIII, or IX of this Consent Decree.

b. If EPA disapproves a proposed Project Coordinator, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. The State shall provide EPA's Project Manager with its list of registered contractors and shall update this list annually. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall

notify EPA and the State of the name of the contractor selected within 21 days of EPA's authorization to proceed.

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

11. Remedial Design

a. Within seven days after lodging of this Consent Decree, Settling Defendants shall submit to EPA and the State two copies of a Site Management Report ("SMR") for the Remedy II Remedial Design. The SMR shall include the information specified in subparagraph D.1.b. of the Remedy II SOW.

b. Within 45 days from the date Settling Defendants receive written notification of EPA's approval, after a reasonable opportunity for State review and comment, of the SMR for the Remedy II Remedial Design, Settling Defendants shall submit to EPA, DOI, and the State three copies each of the Remedy II Remedial Design Work Plan. The requirement that the State be afforded a reasonable opportunity for review and comment upon the SMR shall only apply to contractors that have not been approved by EPA prior to the lodging of this Consent Decree. The Remedy II Remedial Design Work Plan shall provide for design of the remedy set forth in the Revised 1989 ROD, private well sampling,

restoration/replacement of wetlands and uplands adversely affected by Remedy II activities, and long term monitoring relating to fish, wildlife, and other biota in the Section of Deepavaal Brook in accordance with the Remedy II SOW. The Remedy II Remedial Design shall incorporate the results of the approved Studies Report required under paragraph D.5. of the Remedy II SOW. The purpose of the Remedy II Remedial Design is to provide a Remedy II Remedial Action that will intercept the contaminated ground water plume in the lower water table aquifer and upper bedrock aquifer within the 10,000 ppb trichloroethylene contour, as described in the Revised 1989 ROD, in order to reduce the levels of contamination that EPA believes are reaching the Passaic River, reduce the level of contamination in the Seep and Tributary, and reduce residual ground water contamination to a level where the lower bedrock aquifer would not be further degraded and potable water from all aquifers could be attained with moderate treatment. In addition, the purpose of the Remedy II Remedial Design is to design the private well sampling program, restoration/replacement of wetlands and uplands adversely affected by Remedy II activities, and the long term monitoring program relating to fish, wildlife, and other biota in the Section of Deepavaal Brook in accordance with the Remedy II SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree.

c. The Remedy II Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design tasks identified in the Remedy II SOW, including, but not limited to, plans and schedules for the completion of the design of: (1) a ground water recovery well system; (2) a ground water treatment system; (3) a discharge system for treated effluent; (4) remediation for the Seep; (5) the sealing of private wells; (6) a preliminary design submittal; (7) pre-final and final design submittals; (8) the private well sampling program; (9) restoration/replacement of wetlands and uplands natural resources adversely affected by Remedy II activities; and (10) the long term monitoring program relating to fish, wildlife, and other biota in the Section of Deepavaal Brook.

d. Upon approval of the Remedy II Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State and DOI, Settling Defendants shall implement the Remedy II Remedial Design Work Plan and shall implement the private well sampling program in accordance therewith. The Settling Defendants shall submit to EPA, DOI, and the State all plans, submittals and other deliverables required under the approved Remedy II Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedy II Remedial Design activities at the Site prior to approval of the Remedy II Remedial Design Work Plan. The

requirements of this subparagraph shall not apply to work required by the Ground Water Studies AO.

e. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) project delivery strategy; (3) preliminary plans, drawings and sketches; (4) required specifications in outline form; and (5) preliminary construction schedule.

f. The pre-final and final design submittals shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during Remedy II construction activities at the site, shall specify a quality assurance official ("QA Official"), independent of the Settling Defendants' Project Coordinator, to conduct a quality assurance program during the construction phase of the project.

g. Within 30 days after EPA's approval of the Remedy II Final Design Report (or portion relating to subparagraph D.6.g of the Remedy II SOW), Settling Defendants shall commence Deepavaal Brook natural resource related long-term monitoring and shall thereafter implement the requirements of subparagraph A.1.g and paragraph A.6 of the Remedy II SOW.

12. Remedy II Remedial Action

a. Within 60 days after EPA's approval of the Remedy II Final Design Report, Settling Defendants shall submit to EPA and the State a Site Management Plan ("SMP") for Remedy II Remedial Construction activities. This SMP shall be prepared in accordance with paragraph D.11 of the Remedy II SOW.

b. Within 60 days after EPA's approval, after reasonable opportunity for State review and comment, of the SMP for Remedy II Remedial Construction activities, Settling Defendants shall submit to EPA and the State a Remedy II Remedial Construction Work Plan for the performance of the Remedy II Remedial Construction at the Site ("Remedy II Remedial Construction Work Plan"). The Remedy II Remedial Construction Work Plan shall provide for construction of Remedy II, in accordance with the Remedy II SOW, as set forth in the design plans and specifications in the approved final Remedy II design submittal. Upon its approval by EPA, the Remedy II Remedial Construction Work Plan shall be incorporated into and become enforceable under this Consent Decree.

c. The Remedy II Remedial Construction Work Plan shall include the following and all requirements specified in subparagraph E.1.a. of the Remedy II SOW: (1) the schedule for completion of the Remedial Construction; (2) the schedule for developing and submitting other required Remedial Construction plans; (3) methodology for implementation of the Construction Quality Assurance Plan; (4) a groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) preliminary

methodology for implementation of the Operation and Maintenance Plan; (7) methodology for implementation of the Health and Safety/Contingency Plan; (8) tentative formulation of the Remedial Construction team; (9) construction quality control plan (by constructor); and (10) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedy II Remedial Construction Work Plan also shall include a schedule for implementation of all Remedy II Remedial Construction tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Construction Project Team (including, but not limited to, the Settling Defendants' Project Coordinator).

d. Upon approval of the Remedy II Remedial Construction Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedy II Remedial Construction Work Plan, in accordance with the plans and specifications provided in the approved Remedy II Final Design Report and approved construction schedule. The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedy II Remedial Construction Work Plan and the approved Remedy II Final Design Report in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA,

Settling Defendants shall not commence physical on-site construction activities at the Site prior to approval of the Remedy II Remedial Construction Work Plan.

e. No later than 120 days prior to the scheduled completion date of the construction phase of the Remedy II Work, Settling Defendants shall submit to EPA, DOI, and the State a plan and schedule for implementation of restoration/replacement of wetlands and uplands adversely affected by Remedy II remedial construction activities and a plan and schedule for Remedy II wetlands and uplands damage assessment and restoration/replacement to be conducted during the Remedy II operations and maintenance period in accordance with paragraph E.5 of the Remedy II SOW.

f. Upon approval of the plans and schedules required by paragraph E.5 of the Remedy II SOW, Settling Defendants shall implement the plan in accordance with the schedule and take all necessary actions to assure that the natural resource restoration and/or replacement programs are functioning effectively.

g. No later than 120 days prior to the scheduled completion date of the construction phase of the Remedy II Work, Settling Defendants shall submit Remedy II O&M and Ground Water Monitoring Plans in accordance with paragraph F.1 of the Remedy II SOW.

h. Settling Defendants shall perform Remedy II O&M and Ground Water Monitoring for 30 years in accordance with paragraph F of the Remedy II SOW.

i. Within 180 days prior to the completion of the Remedy II O&M Work, Settling Defendants shall submit the plans required by subparagraph F.3.d of the Remedy II SOW. Upon approval of those plans in accordance with the provisions set forth in subparagraph F.3.d, Settling Defendants shall implement those plans in accordance with paragraph H of the Remedy II SOW.

13. The Remedy II Work performed by the Settling Defendants pursuant to this Consent Decree shall include the obligation to achieve the applicable Remedy II Performance Standards.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the Remedy II SOW, or the Remedy II Remedial Design or Remedy II Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the Remedy II SOW and the Remedy II Work Plans will achieve the Remedy II Performance Standards. Settling Defendants' compliance with the work requirements shall not foreclose Plaintiffs from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Remedy II Performance Standards.

15. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site in connection with implementation of the Remedy II SOW to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving

facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

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

b. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedy II Remedial Construction. The Settling Defendants shall provide the information required by Paragraph 15.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

16. Soils Remediation Related Items

a. Prior to or within 30 days of entry of the Consent Decree, Settling Defendants shall submit to EPA, DOI, and the State a wetlands restoration/replacement plan for

restoration/replacement of the approximately 1.9 acres of wetlands on the Caldwell Trucking property that are destroyed or injured as a result of the remedial construction activities required under the Soils Remediation AO ("Soils Remediation AO Related Wetlands R/R Plan") in accordance with paragraph G.1 of the Remedy II SOW.

b. Upon approval of the Soils Remediation AO Related Wetlands R/R Plan in accordance with paragraph G.1 of the Remedy II SOW, the Settling Defendants shall implement the Soils Remediation AO Related wetlands restoration/replacement plan in accordance with the approved schedule and shall take all necessary actions to assure that the restoration and/or replacement program is functioning effectively. Nothing in paragraph 16 of this Consent Decree shall be construed as requiring approval of the Soils Remediation AO Related Wetlands R/R Plan prior to the destruction of, or injury to, the wetlands on the Caldwell Trucking property necessary for implementation of the Soils Remediation AO.

c. At least 180 days prior to completion of the remedial construction activities required under the Soils Remediation AO, in conjunction with the Site Maintenance Plan submission required pursuant to subparagraph A.7.d of the Soils Remediation AO SOW, Settling Defendants shall submit to EPA, DOI, and the State for review and comment a plan for restoration/replacement of the uplands that are destroyed or injured as a result of the remedial construction activities

required under the Soils Remediation AO ("Soils Remediation AO Related Uplands R/R Plan") in accordance with paragraph G.2 of the Remedy II SOW.

d. Upon approval of the Soils Remediation AO Related Uplands R/R Plan by EPA, Settling Defendants shall implement the Soil Remediation AO Related Uplands R/R Plan in accordance with approved schedule and shall take all necessary actions to assure that the restoration and/or replacement program is functioning effectively.

e. As provided in subparagraph A.7.e of the Soils Remediation AO SOW, at least 30 days prior to completion of construction activities required by the Soils Remediation AO, Settling Defendants shall submit to EPA and the State an O&M Plan for Soils Remediation in accordance with paragraph G.3 of the Remedy II SOW.

f. Upon written authorization to proceed from EPA, after reasonable opportunity for State review and comment, Settling Defendants shall implement the Soils Remediation O&M Plan for 30 years to ensure the integrity of the Soils Remediation Remedy.

VII. ADDITIONAL RESPONSE ACTIONS

17. In the event that EPA determines or the Settling Defendants propose that additional response actions are necessary to meet the Remedy II Performance Standards or the Performance Standards for the work required under the Soils Remediation AO, or to carry out the remedies selected in the Revised 1989 ROD and

the Revised 1986 ROD, notification of such additional response actions shall be provided to the Project Coordinator for the other party(ies).

18. Within 30 days of receipt of notice from EPA or Settling Defendants pursuant to Paragraph 17 that additional response actions are necessary (or such longer time as may be specified by EPA), Settling Defendants shall submit 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 the applicable requirements of Paragraphs 10 and 11. Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval), Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein.

19. Any additional response actions that Settling Defendants propose are necessary to meet the Remedy II Performance Standards or the Performance Standards for the work required under the Soils Remediation AO, or to carry out the remedies selected in the Revised 1989 ROD and the Revised 1986 ROD, shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State, and, if authorized by EPA, shall be completed by Settling Defendants in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XII (Submissions Requiring Agency Approval).

20. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Remedy II Performance Standards or the Performance Standards for the work required under the Soils Remediation AO, or to carry out the remedies selected in the revised Remedy II ROD and the revised 1986 ROD. Such a dispute shall be resolved pursuant to Paragraphs 63-66 of this Consent Decree.

VIII. EPA PERIODIC REVIEW

21. Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

22. If required by Sections 113(k)(2) or 117 of CERCLA, Settling Defendants, the State and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region II, or his/her delegate will determine in writing whether further response actions are appropriate.

23. If the Regional Administrator, EPA Region II, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the Remedy II Remedial Action or

the work required pursuant to the Soils Remediation AO is not protective of human health and the environment, the Settling Defendants shall undertake any further response actions EPA has determined are appropriate, except as stated in Paragraph 7, unless their liability for such further response actions is barred by the Covenant Not to Sue set forth in Section XXII. Settling Defendants 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. The Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the Remedy II Remedial Action or the work required pursuant to the Soils Remediation AO is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Defendant's liability for the further response actions requested is reserved in Paragraphs 80, 81, or 84 or otherwise not barred by the Covenant Not to Sue set forth in Section XXII.

IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

24. a. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with EPA's "Region II CERCLA Quality Assurance Manual," EPA-Region II, Revision 1, dated October 1989,

"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 upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree.

c. Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA and the State pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for

the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis," dated July 1988, and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

25. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Defendants shall notify EPA and the State not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deem necessary. Upon request, EPA and the State shall allow the Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiffs' oversight of the Settling Defendants' implementation of the Work.

26. Settling Defendants shall submit to EPA and the State two 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 Consent Decree unless EPA agrees otherwise.

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

X. ACCESS

28. Commencing upon the date of lodging of this Consent Decree, the Settling Defendants agree to provide the United States, the State, and their representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Remedy II Work and all work required under the Soils Remediation AO and the Ground Water Studies AO;
- 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 XXV; and

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

29. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendants, Settling Defendants shall use best efforts to secure from such persons access for Settling Defendants, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Remedy II Work is not obtained within 45 days of the date of lodging of this Consent Decree, or if any access required to complete the Work is not obtained within 45 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, Settling Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendants have taken to attempt to obtain access. The United States or the State may, as they deem appropriate, assist Settling Defendants in obtaining access. Settling Defendants shall reimburse the United States or the State, in accordance

with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States or the State in obtaining access.

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

XI. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA, DOI, and the State two copies each of written monthly progress reports that:

- (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month;
- (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month;
- (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month;
- (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts;
- (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule

for implementation of the Remedy II Work, the work required under the Soils Remediation AO and the Ground Water Studies AO, and/or any other work required under this Consent Decree (including but not limited to the work required under paragraph G of the Remedy II SOW), and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA, DOI, and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants that all the obligations of this Consent Decree have been met. If requested by EPA or the State, Settling Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work. After completion of Remedy II Remedial Construction and the work required under the Soils Remediation AO, the parties may agree to a different schedule for periodic reporting.

32. The Settling Defendants shall notify EPA, DOI, and the State of any change in the schedule described in the monthly 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.

33. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Settling Defendants shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region II, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304. The EPA Project Coordinator or Alternate Project Coordinator shall promptly notify the State's case manager of the release.

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

35. Settling Defendants shall submit copies of all plans, reports, and data required by each SOW, each Remedial Design work plan, each Remedial Action work plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans.

The number of required copies of each submittal is specified in each SOW. Settling Defendants shall simultaneously submit three (3) copies of all such plans, reports and data to the State, unless otherwise stated in a SOW. Where the Remedy II SOW states that plans, reports, or data are to be submitted to DOI, Settling Defendants shall simultaneously submit three (3) copies of such plans, reports and data to DOI.

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

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State (and DOI, where provided for in the Remedy II SOW), shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA

subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (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 37(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXI.

39. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendants shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in

accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as amended or developed by EPA, subject only to their right to invoke the procedures set forth in Section XX (Dispute Resolution).

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

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

XIII. PROJECT COORDINATORS

43. Within seven days of lodging this Consent Decree, Settling Defendants, the State, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least five working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA pursuant to paragraph 10 and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC)

by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

45. Notice by EPA to the Settling Defendants' Project Coordinator shall be deemed notice to the Settling Defendants for all matters relating to the Work under this Consent Decree. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will confer, at a minimum, on a monthly basis. If requested by the Settling Defendants to discuss unresolved issues relating to performance of the Work, EPA's Project Coordinator and the Settling Defendants' Project Coordinator will confer within two weeks of the request. If meetings are held, the State will be given an opportunity to attend. After Remedy II Remedial Construction and the work required pursuant to the Soils Remediation AO have been completed, the parties may agree on a different schedule for conferring.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

46. Within 30 days of entry of this Consent Decree, Settling Defendants shall demonstrate their ability to complete the Work by establishing and maintaining financial security,

equalling the total estimated cost of the Work, in one of the following forms:

(a) A surety bond guaranteeing performance of the Work;

(b) One or more irrevocable letters of credit equalling the total estimated cost of the Work;

(c) A trust fund;

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

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

47. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 46(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 46(d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this

Section are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 46 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XV. CERTIFICATION OF REMEDY II COMPLETION

48. Completion of the Remedy II Remedial Action

a. Within 90 days after Settling Defendants conclude that the Remedy II Remedial Action has been fully performed and the Remedy II Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedy II Remedial Action has been fully performed and the Remedy II Performance Standards have been attained, 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 Settling Defendants' Project Coordinator shall state that the Remedy II Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The

report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

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

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

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedy II Remedial Action and after a reasonable opportunity for review and comment by the State, that the Remedy II Remedial Action has been fully performed in accordance with this Consent Decree and that the Remedy II Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedy II Remedial Action for purposes of this Consent Decree, including, but not limited to, paragraphs 80 and 81 of Section XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedy II Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

49. Completion of the Remedy II Work

a. Within 90 days after Settling Defendants conclude that all phases of the Remedy II Work have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedy II Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Remedy II Work has been completed in full satisfaction of the Remedy II requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible

corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Remedy II Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Remedy II Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the Remedy II SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion of the Remedy II Work by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Remedy II Work has been fully performed in accordance with this Consent Decree, EPA will so notify the 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, 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 notify the EPA Emergency Response Unit, Region II. EPA's Project Coordinator or Alternate Project Coordinator shall promptly notify the State's Case Manager. 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 SOWs for Remedy II, the Soils Remediation AO and the Ground Water Studies AO. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, Settling Defendants shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

51. Nothing in the preceding Paragraph or in this 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 OF RESPONSE COSTS AND OTHER ITEMS

52. a. In reimbursement of Past Response Costs incurred by the United States, Settling Defendants shall pay to the United States (1) \$960,000 within 30 days of the effective date of this Consent Decree and (2) \$1,000,000, plus interest at 5.36% per annum commencing 30 days from the effective date of this Consent Decree, within 395 days of the effective date of this Consent Decree. Settling Defendants shall make these payments to the United States by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID # 02B3, and DOJ case number 90-11-3-952. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendants upon execution of the Consent Decree. Payments by EFT must be received at the U.S. D.O.J. lockbox bank by 11 A.M. (Eastern Time) to be credited on that day. Proof of this payment shall be sent to the United States as specified in Section XXVII (Notices and Submissions). Any EFTs received at the U.S.D.O.J. lockbox bank after 11 A.M.

(Eastern Time) will be credited on the next business day. Payments must be received by 11 AM (Eastern Time) on the date due or they shall be deemed late. The United States will apply the \$1,960,000 reimbursement of Past Response Costs (a) first, to the costs associated with development of the 1989 ROD, including but not limited costs associated with the second RI/FS, and (b) second, any remaining amount towards the costs associated with the first RI/FS.

b. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall pay to the U.S. Department of Interior ("DOI") \$40,000 in reimbursement of past and anticipated future U.S. Department of Interior costs of assessing natural resource damages relating to the Caldwell Trucking Site and this Consent Decree, including but not limited to review and monitoring of Settling Defendants' natural resource restoration or replacement plans and implementation thereof. The payment shall be made by certified or bank check, made payable to the Secretary of the Interior, and shall reference the NRDAR account number 14X1618 as well as the "Caldwell Trucking Site." The check shall be sent directly to Chief, Division of Finance, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22030. Copies of the check and transmittal letter shall be sent to the persons listed under United States and DOI in Section XXVII of this Consent Decree.

c. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall pay to the State

\$157,565.90 in the form of a certified check made payable to the Treasurer, State of New Jersey in reimbursement of Past Response Costs incurred by the State. The Settling Defendants shall send the certified check accompanied by the appropriate Form DEP-62A to the Chief, Bureau of Revenue, New Jersey Department of Environmental Protection and Energy, CN 420, 440 East State Street, Trenton, New Jersey 08625, with a copy of the check to the State as specified in Section XXVII (Notices and Submissions).

d. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall pay to the State, in its capacity as trustee for natural resources, \$984,434.10 in the form of a certified check made payable to the Treasurer, State of New Jersey in compensation for damages to groundwater natural resources and in reimbursement of past costs for assessing natural resource damages incurred by the State to the Chief, Office of Natural Resource Damages, New Jersey Department of Environmental Protection and Energy, CN 404, Station Plaza 5, 501 East State Street, Floor 3, Trenton, New Jersey 08625, with a copy of the check to the State as specified in Section XXVII (Notices and Submissions). The check will be deposited into an interest bearing account (acct. no. _____) to be administered by the State in its capacity as trustee for natural resources.

53. a. Settling Defendants shall reimburse the United States for all U.S. Supervisory Costs not inconsistent with the National Contingency Plan incurred by the United States up to a limit of \$500,000. Settling Defendants shall also reimburse the United States for any Future Response Costs, as defined in Paragraph 4.F of this Consent Decree, incurred by the United States not inconsistent with the National Contingency Plan, other than U.S. Supervisory Costs, as defined in Paragraph 4.RR of this Consent Decree. The United States will periodically send Settling Defendants billings for such costs. These billings will be accompanied by a printout of cost data in EPA's financial management system and by a calculation of EPA's indirect costs. Settling Defendants shall make all payments to EPA within 45 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 54. The Settling Defendants shall make all payments to EPA required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the U.S.A.O. file number _____, the EPA Region and Site/Spill ID # 02B3, and DOJ case number 90-11-3-952. With regard to United States' Future Response Costs, the Settling Defendants shall forward the certified checks to: EPA, Region II, Attn: Superfund Accounting, P.O. Box 36188M, Pittsburgh, PA 15251 and shall send copies of the checks to the United States as specified in Section XXVII (Notices and Submissions).

b. Settling Defendants shall reimburse the State for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the State and for all future State costs for assessing natural resource damages relating to the Site and this Consent Decree, including, but not limited to, review and monitoring of Settling Defendants' natural resource restoration or replacement plans and the implementation thereof. The State will periodically send Settling Defendants a bill requiring payment that includes a State-prepared cost summary, which includes direct and indirect costs incurred by the State. Settling Defendants shall make all payments to the State within 45 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in paragraph 54. With regard to the State's Future Response Costs, the Settling Defendants shall make the certified checks payable to the Treasurer, State of New Jersey, and then forward the checks accompanied by the appropriate Form DEP-62A to the Chief, Bureau of Revenue, New Jersey Department of Environmental Protection and Energy, CN 420, 440 East State Street, Trenton, New Jersey 08625, with a copy of the check to the State as specified in Section XXVII (Notices and Submissions). With regard to future State costs for assessing natural resource damages including, but not limited to, review and monitoring of Settling Defendants' natural resource restoration or replacement plans and the implementation thereof, the Settling Defendants shall make the certified checks payable to the Treasurer, State of New Jersey, and then forward

the checks to the Chief, Office of Natural Resource Damages, New Jersey Department of Environmental Protection and Energy, CN 404, Station Plaza 5, 501 East State Street, Floor 3, Trenton, New Jersey 08625, with a copy of the check to the State as specified in Section XXVII (Notices and Submissions). The checks will be deposited into an interest bearing account (acct. no. _____) to be administered by the State in its capacity as trustee for natural resources.

54. Settling Defendants may contest payment of any Future Response Costs under Paragraph 53 if they determine that the United States or the State has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 45 days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 45 day period pay all uncontested Future Response Costs to the United States or the State in the manner described in Paragraph 53. Simultaneously, the Settling Defendants shall establish an interest bearing escrow account in a federally-insured bank duly chartered in the State of New Jersey and remit to that escrow account funds equivalent to the amount of the contested Future

Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established 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 XX (Dispute Resolution). If the United States or the State prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States, if the United States costs are disputed, or the State, if State costs are disputed, in the manner described in Paragraph 53. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States, if the United States costs are disputed, or the State, if State costs are disputed, in the manner described in Paragraph 53; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the

exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States and the State for their Future Response Costs.

55. In the event that the payments required by Paragraph 52 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 53 are not made within 45 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Settling Defendants' receipt of the bill. Interest shall accrue at the rate specified through the date of the Settling Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

56. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees,

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

57. Settling Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States

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

58. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedy II Remedial Action pursuant to Paragraph 48.b. of Section XV (Certification of Remedy II Completion) comprehensive general liability insurance with limits of ten million dollars, combined single limit, and automobile insurance with limits of three million dollars, combined single limit, naming as additional insured the United States and the State. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in

furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

59. "Force majeure," for purposes of this 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 the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event,

such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Emergency & Remedial Response Division, EPA Region II, within 72 hours of when Settling Defendants first knew or should have known that the event might cause a delay. Within seven days thereafter, Settling Defendants shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the

above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

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

62. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute

Resolution), they shall do so no later than 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 Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

63. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States 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 Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from

the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

65. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA, or the State in the regard to disputes concerning the reimbursement of Future Response Costs to the State ("State Future Response Costs") or future state costs for assessing natural resource damages including, but not limited to, review and monitoring of Settling Defendants' natural resource damages restoration or replacement plans and the implementation thereof ("State Future NRD Assessment Costs") pursuant to Paragraph 53.b of this Consent Decree, 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 66 or 67.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA, or the State in regard to State

Future Response Costs or State Future NRD Assessment Costs, 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, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs. This Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66 or 67.

c. If there is disagreement between EPA, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs, and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 66 or 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs, 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 66 or 67.

66. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response

action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, including, but not limited to, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA relating to the Remedy II Work and the work required under the Soils Remediation AO and Ground Water Studies AO; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree, including, but not limited to, the adequacy of the performance of response actions taken to implement the Remedy II Work and the work required under the Soils Remediation AO and Ground Water Studies AO. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the Revised 1989 ROD's provisions or the Revised 1986 ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs, and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, EPA, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs, may allow submission of supplemental statements of position by the parties to the dispute.

b. In disputes between EPA and the Settling Defendants, the Director of the Emergency & Remedial Response

Division, EPA Region II, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. In disputes between the State and Settling Defendants in regard to State Future Response Costs, the Director, Division of Responsible Party Site Remediation, CN 028, 401 East State Street, Trenton, New Jersey 08625, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. In disputes between the State and Settling Defendants in regard to State Future NRD Assessment Costs, the Assistant Commissioner, Natural and Historic Resources, CN 404, Station Plaza 5, 501 East State Street, Floor 3, Trenton New Jersey 08625-0404, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.a. The final administrative decision of EPA, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs, shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 66.c. and d.

c. Any administrative decision made by EPA, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs, pursuant to Paragraph 66.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 the final administrative decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made

by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs, may file 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 final administrative decision of EPA, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs, is arbitrary and capricious or otherwise not in accordance with law. Judicial review of the final administrative decision of EPA, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs, shall be on the administrative record compiled pursuant to Paragraphs 66.a.

67. 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 Emergency & Remedial Response, EPA Region II, the Director, Division of Responsible Party Site Remediation, CN 028, 401 East State Street, Trenton, New Jersey 08625, in regard

to State Future Response Costs, or the Assistant Commissioner, Natural and Historic Resources, CN 404, Station Plaza 5, 501 East State Street, Floor 3, Trenton, New Jersey 08625-0404, in regard to State Future NRD Assessment Costs, will issue a final decision resolving the dispute. The final 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 Consent Decree. The United States, or the State in regard to State Future Response Costs or State Future NRD Assessment Costs, may file a response to Settling Defendants' notice of judicial appeal.

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

68. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree not directly in dispute, unless EPA 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 76.

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

XXI. STIPULATED PENALTIES

69. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 70 to the United States for failure to comply with the requirements of this Consent Decree, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of the activities required under this Consent Decree or any work plan or other plan approved under this Consent Decree in accordance with all applicable requirements of law, this Consent Decree, each SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree, including, but not limited to, activities, plans, documents, and schedules required to implement the Remedy II Work and the work required under the Soils Remediation AO and Ground Water Studies AO.

70. a. The following stipulated penalties shall be payable per violation per day to the United States for each instance of noncompliance by Settling Defendants with the requirements of Paragraph 53 (work plans and modification of

remedial design and specification plans only) and Paragraph 55 of the Soils Remediation AO as applicable through Section V of the Consent Decree, Paragraph 3.f of the Ground Water Studies AO SOW as applicable through Section V of the Consent Decree, and Sections VI, VII, VIII, XII, XIV, XVI, and XVII of the Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty per Violation Per Day</u>
1st through 7th day	\$ 1,000
8th through 14th day	\$ 2,500
15th through 29th day	\$ 5,000
30th through 59th day	\$ 7,500
60th day and beyond	\$10,000

b. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance by Settling Defendants with the requirements of Sections V (except where addressed by Paragraph 70.a above), IX, X, XI, XIII, XV, XVIII, XXIV (Paragraphs 89 and 90), XXV, and XXVI of this Consent Decree:

<u>Period of Noncompliance</u>	<u>Penalty per Violation Per Day</u>
1st through 7th day	\$ 100
8th through 14th day	\$ 250
15th through 29th day	\$ 500
30th through 44th day	\$ 750
45th through 59th day	\$1000
60th day and beyond	\$1500

71. In the event that EPA or the State assumes performance of a portion or all of the Remedy II Work pursuant to Paragraph 85 of Section XXII (Covenants Not to Sue by Plaintiffs), Settling Defendants shall be liable for a stipulated penalty in an amount

equal to three times the cost of the Remedy II Work performed by EPA or the State.

72. 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. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

73. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA 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 has notified the Settling Defendants of a violation.

74. All penalties owed to the United States under this section shall be due and payable within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Region II, ATTN: Superfund Accounting, P.O. Box 360188M, Pittsburgh, PA 15251, and shall reference the U.S.A.O. file number _____, CERCLA Site/Spill ID # 02B3, and DOJ case

number 90-11-3-952. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

75. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree, including the Remedy II Work and the work required pursuant to the Soils Remediation AO and the Ground Water Studies AOs.

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

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to the United States 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 into an interest-bearing escrow account within 60 days of receipt

of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

77. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 73 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the federal or state statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA. However, with regard to any violations of the Soils Remediation AO or the Ground Water Studies AO which are also violations of this Consent Decree, if the United States seeks penalties pursuant to Section 106(b) of CERCLA for a particular violation of the AO for a particular time period of violation, it will not also seek stipulated penalties pursuant to Section XXI of this Consent Decree for the same violation for the same time period of

violation. Conversely, with regard to any violations of the Soils Remediation AO or the Ground Water Studies AO which are also violations of this Consent Decree, if the United States seeks stipulated penalties pursuant to Section XXI of this Consent Decree for a particular violation of the AO for a particular time period of violation, it will not also seek penalties pursuant to Section 106(b) of CERCLA for the same violation for the same time period of violation; provided, however, this sentence shall not be construed as prohibiting, altering, or limiting in any way the ability of the United States to seek penalties pursuant to Section 122(1) of CERCLA, as well as stipulated penalties pursuant to Section XXI of this Consent Decree, for such violations.

78. No payments made under this Section shall be tax deductible for Federal or State tax purposes.

XXII. COVENANTS NOT TO SUE BY PLAINTIFFS

79. a. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 80, 81, 82, and 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs and Natural Resource Damages. These covenants not to sue shall take effect upon the receipt by EPA and DOI of the payment required by

Paragraph 52.a and 52.b of Section XVII (Reimbursement of Response Costs and Other Items). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

b. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 80, 81, 82, and 84 of this Section, the State covenants not to sue or to take administrative action against Settling Defendants pursuant to N.J.S.A. 58:10-23.11 et seq. and the regulations promulgated thereunder, specifically N.J.A.C. 7:1E-1.1 et seq., or Section 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs and Natural Resource Damages. These covenants not to sue shall take effect upon the receipt by the State of the payment required by Paragraph 52.c and 52.d of Section XVII (Reimbursement of Response Costs and Other Items). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

80. United States' and State's Pre-certification reservations

a. Notwithstanding any other provision of this Consent

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

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

and EPA determines, after a reasonable opportunity for review and comment by the State, based on these previously unknown conditions or this information together with any other relevant information, that either the Remedy II Remedial Action or the work done pursuant to the Soils Remediation AO, or both, are not protective of human health or the environment.

b. Notwithstanding any other provision of this Consent Decree, the State reserves, pursuant to its authorities under Section 107 of CERCLA, the Spill Act, and any other applicable State statute, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel Settling Defendants

- (1) to perform further response actions relating to the Site to the extent that EPA determines, after a

reasonable opportunity for review and comment by the State, that such actions will not significantly delay or be inconsistent with either the Remedy I Remedial Action or the Remedy II Remedial Action, or

(2) to reimburse the State for additional costs of response actions to the extent that EPA determines, after a reasonable opportunity for review and comment by the State, that such actions will not significantly delay or be inconsistent with either the Remedy I Remedial Action or the Remedy II Remedial Action,

if, prior to EPA's certification of completion of the Remedy II Remedial Action:

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

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

and EPA determines, after a reasonable opportunity for review and comment by the State, based on these previously unknown conditions or this information together with any other relevant information, that either the Remedy II Remedial Action or the work done pursuant to the Soils Remediation AO, or both, are not protective of human health or the environment.

81. United States' and State's Post-certification reservations

a. Notwithstanding any other provision of this Consent Decree, the United States reserves and this Consent Decree is without prejudice to, the right to institute proceedings in this

action or in a new action, or to issue an administrative order, seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to EPA's certification of completion of the Remedy II Remedial Action:

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

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

and EPA determines, after a reasonable opportunity for review and comment by the State, based on these previously unknown conditions or this information together with other relevant information, that either the Remedy II Remedial Action or the work done pursuant to the Soils Remediation AO, or both, are not protective of human health or the environment.

b. Notwithstanding any other provision of this Consent Decree, the State reserves, pursuant to its authorities under Section 107 of CERCLA, the Spill Act, and any other applicable State statute, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel Settling Defendants

(1) to perform further response actions relating to the Site to the extent that EPA determines, after a reasonable opportunity for review and comment by the

State, that such actions will not be inconsistent with either the Remedy I remedial action or the Remedy II Remedial Action, or

(2) to reimburse the State for additional costs of response actions to the extent that EPA determines, after a reasonable opportunity for review and comment by the State, that such actions will not be inconsistent with either the Remedy I Remedial Action or the Remedy II Remedial Action,

if, subsequent to EPA's certification of completion of the Remedy II Remedial Action:

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

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

and EPA determines, after a reasonable opportunity for review and comment by the State, based on these previously unknown conditions or this information together with any other relevant information, that either the Remedy II Remedial Action or the work done pursuant to the Soils Remediation AO, or both, are not protective of human health or the environment.

82. Reservations concerning natural resource injury

Notwithstanding any other provision of this Decree, the United States and the State, on behalf of their natural resource trustees, reserve the right to institute proceedings against 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 at the date of lodging of this Decree, that result in releases or threatened 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 the 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 at the date of lodging of this Decree.

83. For purposes of Paragraph 80, the information and the conditions known to EPA shall include only: (1) that information and those conditions set forth in the Revised 1989 Record of Decision and the administrative record supporting the Revised 1989 Record of Decision; and (2) that information and those conditions set forth in the Revised 1986 Record of Decision and the administrative record supporting the Revised 1986 Record of Decision. For purposes of Paragraph 81, the information and the conditions known to EPA shall include only: (1) that information and those conditions set forth in the Revised 1989 Record of Decision and the administrative record supporting the Revised 1989 Record of Decision; (2) that information and those conditions set forth in the Revised 1986 Record of Decision, and the administrative record supporting the Revised 1986 Record of Decision; and (3) any information received by EPA pursuant to the

requirements of this Consent Decree prior to Certification of Completion of the Remedy II Remedial Action.

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

(1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

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

(3) criminal liability;

(4) liability for violations of federal or state law which occur during or after implementation of the Remedy II Remedial Action and the work required under the Soils Remediation AO and the Ground Water Studies AO;

(5) liability for additional operable units at the Site;

(6) liability for costs that the United States or the State will incur related to the Site but are not within the definition of Future Response Costs, including, without limitation, any claims which are pending or yet to be filed against the New Jersey Spill Compensation Fund and the Sanitary Landfill Contingency Fund arising from, or in any

way related to, the Site, as that term is defined in this Consent Decree, and which have not been resolved by the date of entry of this Consent Decree;

(7) liability for damages under CERCLA § 107(c)(3) for failure to comply with the Soils Remediation AO or the Ground Water Studies AO; and

(8) liability for site operation and maintenance and long term monitoring to the extent not covered by the work required under the Soils Remediation AO and the Remedy II Remedial Action.

85. In the event EPA determines, after reasonable opportunity for review and comment by the State, that Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA or the State may perform any and all portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that the Settling Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States or the State 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).

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

XXIII. COVENANTS BY SETTLING DEFENDANTS

87. 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 with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the New Jersey Spill Compensation Fund or the New Jersey Sanitary Landfill Contingency Fund or the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. This covenant not to sue includes, but is not limited to, a covenant by the Settling Defendants not to sue the United States, including the Hazardous Substance Superfund, directly or indirectly, for reimbursement of response costs the Settling Defendants incur in performing the Remedy II Work and the work required pursuant to the Soils Remediation AO and Ground Water Studies AO. However, the Settling Defendants reserve, and this 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 Settling Defendants' plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

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

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

Consent Decree include the Remedy II Work, the work required under the Soils Remediation AO, the work required under the Ground Water Studies AO, Past Response Costs, and Future Response Costs, but does not include the matter excluded in Paragraph 7 of this Consent Decree.

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

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

92. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs or Natural Resource Damages, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, entire controversy doctrine, 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 XXII (Covenants Not to Sue by Plaintiffs).

93. NJDEPE and Settling Defendants agree to the provisions of Appendix VII, which relate to NJDEPE's authorities under N.J.S.A. 58:10-23.11f(a).

XXV. ACCESS TO INFORMATION

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

95. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to

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

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

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

XXVI. RETENTION OF RECORDS

97. 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 Remedy II Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to (a) the performance of the Remedy II Work, the work required by the Soils Remediation AO, or the work required pursuant to the Ground Water Studies AO or (b) the 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 Remedy II Work), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Remedy II Work, the work required pursuant to the Soils Remediation AO, or the work required pursuant to the Ground Water Studies AO.

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

99. 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.

XXVII. NOTICES AND SUBMISSIONS

100. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOI, the State, and the Settling Defendants, respectively. Where a specific document is required pursuant to this Consent Decree to be submitted to "EPA" and, where applicable, "DOI," rather than the "United States," it need not be submitted to the attorneys listed below under "United States," but shall be submitted to the EPA Project Manager listed below under "EPA" and, where applicable, the persons listed below under "DOI." Technical reports required to be submitted pursuant to this Consent Decree to the "State" need not be submitted to the Chief, Hazardous Site Litigation Section, listed below under "State," but shall be submitted to the NJDEPE Case Manager listed below under "State," and, for those technical reports required to

be submitted to both the State and DOI, to the Chief, Office of Natural Resources, NJDEPE.

As to the United States:

EPA Project Manager -- Caldwell Trucking
Superfund Site
Emergency & Remedial Response Division
United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, N.Y. 10278

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-3-952

Chief, New Jersey Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, N.Y. 10278
Attn: Caldwell Trucking Superfund Site Attorney

United States Department of the Interior
Northeast Region
Office of the Regional Solicitor
Attn: Marcia Gittes
One Gateway Center - Suite 612
Newton Corner, Massachusetts 02158

As to EPA:

EPA Project Manager -- Caldwell Trucking
Superfund Site
Emergency & Remedial Response Division
United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, N.Y. 10278

As to DOI:

U.S. Fish and Wildlife Service
Attn: Clifford G. Day
927 N. Main Street
Pleasantville, N.J. 08232

Regional Environmental Officer
Office of Environmental Affairs
Room 217, Custom House
200 Chestnut St.
Philadelphia, PA 19106

As to the State:

NJDEPE Case Manager -- Caldwell Trucking
Superfund Site
New Jersey Department of Environmental Protection
and Energy-Responsible Party Cleanup Element
CN 028
401 East State Street
Trenton, New Jersey 08625

Chief, Office of Natural Resource Damages
New Jersey Department of Environmental Protection
and Energy
CN 404
501 East State Street
Trenton, New Jersey 08625

Chief, Hazardous Site Litigation Section
Department of Law and Public Safety
Division of Law
Richard J. Hughes Complex, CN 028
Trenton, N.J. 08625

As to the Settling Defendants:

Name:
Settling Defendants' Project Coordinator
Address:

XXVIII. EFFECTIVE DATE

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

XXIX. RETENTION OF JURISDICTION

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

XXX. APPENDICES

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

"Appendix I" is the Revised Remedy II ROD, including the 1989 ROD and the August 1993 ESD.

"Appendix II" is the Remedy II SOW.

"Appendix III" is the Site maps.

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

"Appendix V" is the Soils Remediation AO and attached SOW,

including the Remedial Design - Caldwell Trucking Site Excavation Plans and Specifications, the 1986 ROD and the 1991 and February 1993 ESDs, and all attachments thereto.

"Appendix VI" is the Ground Water Studies AO and attached SOW and Ground Water Studies Work Plan.

"Appendix VII" contains the provisions agreed to by NJDEPE and the Settling Defendants relating to NJDEPE's authorities under N.J.S.A. 58:10-23.11f(a) in regard to the Caldwell Trucking Site.

XXXI. COMMUNITY RELATIONS

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

XXXII. MODIFICATION

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

106. No material modifications shall be made to the Remedy II SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Remedy II SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

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

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

109. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the

agreement may not be used as evidence in any litigation between the Parties.

XXXIV. SIGNATORIES/SERVICE

110. Each undersigned representative of a Settling Defendant to this Consent Decree, the undersigned representative of the State of New Jersey, and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice on behalf of the United States certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

111. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree. The United States shall provide a copy of any such notification to the State.

112. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this

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

SO ORDERED THIS _____ DAY OF _____, 199_.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. The Carborundum Company, et al., relating to the Caldwell Trucking Company Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

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

Date: _____

Elizabeth Yu
Environmental Enforcement Section
P.O. Box 7611, Ben Franklin
Station
U.S. Department of Justice
Washington, D.C. 20044

Date: _____

Susan C. Cassell
Assistant United States Attorney
District of New Jersey
970 Broad St., Rm. 502
Newark, New Jersey 07102

Date: _____

William J. Muszynski, P.E.
Acting Regional Administrator
Region II
U.S. Environmental Protection
Agency
26 Federal Plaza
New York, N.Y. 10278

Date: _____

Virginia A. Curry
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region II
26 Federal Plaza
New York, N.Y. 10278

United States v. The Carborundum Company, et al.,

Consent Decree Signature Page

FOR THE STATE OF NEW JERSEY

Fred DeVesa
Acting Attorney General

Date: _____

By:

Brendan Ruane
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
Division of Law
Richard J. Hughes Justice Complex
CN 093
Trenton, New Jersey 08625

Date: _____

Ronald T. Corcory
Assistant Director
Responsible Party Cleanup Element
New Jersey Department of
Environmental Protection and Energy
CN 028
401 East State Street
Trenton, New Jersey 08625

Date: _____

Jim Hall
Assistant Commissioner
Natural and Historic Resources
CN 404
Station Plaza 5
501 East State Street, Floor 3
Trenton, New Jersey 08625-0404

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Carborundum Company, et al., relating to the Caldwell Trucking Company Superfund Site.

FOR

FLUID CONDITIONING PRODUCTS

Date:

12/30/93

Name:

Title: KARL K. REMBERT

Address:

Ex. U.P.Kline & Washburn St
or P.O. Box 407Leitz, PA 17843

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

Name: MAURICE H. BITNER ESQTitle: Attorney

Address:

1222 Rt. 46 EastParsippany, N.J. 07054


Tel. Number:

201 334 8929

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Carborundum Company, et al., relating to the Caldwell Trucking Company Superfund Site.

FOR The Carborundum Company

Date: December 8, 1993


Name: R. A. McGimpsey
Title: Vice President
Address: 200 Public Square
Cleveland, OH 44114

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

Name: Barbara A. Rutigliano
Title: Secretary
Address: 200 Public Square
Cleveland, OH 44114

Tel. Number:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Carborundum Company, et al., relating to the Caldwell Trucking Company Superfund Site.

FOR Cooper Industries, Inc.

Date: 12-17-93

Robert W. Teets

Name: Robert W. Teets
Title: Vice President
Address: P.O. Box 4446
Houston, TX 77210

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


Name: Mark J. Airola
Title: Senior Counsel, Litigation
Address: P.O. Box 4446
Houston, TX 77210

Tel. Number: (713) 739-5541

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Carborundum Company, et al., relating to the Caldwell Trucking Company Superfund Site.

FOR Curtiss-Wright Corporation

Date: December 21, 1993


Name: Dana M. Taylor
Title: General Counsel
Address: 1200 Wall Street West
Lyndhurst, NJ 07071

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

Name: Dana M. Taylor
Title: General Counsel
Address: 1200 Wall Street West
Lyndhurst, NJ 07071

Tel. Number: 201-460-8108

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Carborundum Company, et al., relating to the Caldwell Trucking Company Superfund Site.

FOR E.I. DuPont de Nemours & Co.

Date: 12/20/93

J.B. Allen
Name: James B. Allen
Title: Counsel
Address: 8068
Wilmington, DE 19898

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


Name: James B. Allen
Title: Counsel
Address: E.I. DuPont de Nemours & Co.
Legal Department, Room D-8068
Wilmington, DE 19898

Tel. Number: 302-774-5445

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Carborundum Company, et al., relating to the Caldwell Trucking Company Superfund Site.

FOR ENGELHARD CORPORATION

Date: 12 / 17 / 93


Name: CLAUDE AZIERES
Title: GROUP VICE PRESIDENT AND GENERAL
Address: MANAGER, ENGINEERED MATERIALS GROUP
101 WOOD AVENUE
ISELIN, NJ 08830

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

Name: NATALIE E. NELSON, ESQ.
Title: ASSISTANT GENERAL COUNSEL
Address: ENGELHARD CORPORATION
101 WOOD AVE.
ISELIN, NJ 08830

Tel. Number: 908-205-6152

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Carborundum Company, et al., relating to the Caldwell Trucking Company Superfund Site.

FOR Kearfott Guidance & Navigation Corporation

Date: December 28, 1993



Name: Norma Paige
Title: Executive Vice President
Address: 150 Totowa Road
Wayne, NJ 07474-0946

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

Name: Julie R. Witte, Esq.
Title: Assistant Corporate Counsel
Address: 1225 McBride Avenue
Little Falls, NJ 07424
Mail Code 03A37

Tel. Number: (201) 785-5763

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Carborundum Company, et al., relating to the Caldwell Trucking Company Superfund Site.

FOR Schering Corporation



Date: December 14, 1993

Name: Donald R. Conklin
Title: Vice President
Address: 2000 Galloping Hill Road
Kenilworth, N.J. 07003

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

Name: William R. Hedden
Title: Legal Director-Litigation
Address: 2000 Galloping Hill Road
Kenilworth, N.J. 07033

Tel. Number: (908) 298-2939

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. The Carbörundum Company, et al., relating to the Caldwell Trucking Company Superfund Site.

FOR SCOVILLE INC

Date: 2-28-93

Scott D. Robbins
Name: Scott D. Robbins
Title: Executive Vice President
Address: 767 Third Avenue
NY NY 10017

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

Name: Charles Perry
Title: Partner
Address: Hutton & Williams
NationsBank Plaza - Suite 4100
600 Peachtree St, NE
Atlanta GA 30308-2216
Tel. Number: 404 888 4000

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APPENDIX II
REMEDY II
STATEMENT OF WORK

A. WORK TO BE PERFORMED

As described in greater detail in this Statement of Work ("SOW"), the Remedy II Work and other items to be performed under this Consent Decree, CIVIL ACTION NO. _____ shall include, but shall not be limited to, the following elements:

1. Remedial Design of the Remedy as described in the Revised 1989 Record of Decision ("Revised 1989 ROD"), hereinafter referred to as "Remedy II," and the Remedy II related requirements pertaining to natural resource damages.

Remedy II include:

a. Installation of ground water recovery wells and associated piping to intercept contaminated ground water within the 10,000 ppb trichloroethylene ("TCE") contour in the lower water table aquifer and the upper bed rock aquifer, as described in the Revised 1989 ROD, in order to reduce the levels of contamination from the Caldwell Trucking plume that EPA believes are reaching the Passaic River, reduce the levels of contamination in the Seep and Tributary, and reduce residual ground water contamination to a level where the lower bedrock aquifer would not be further degraded and potable water from all aquifers could be attained with moderate treatment.

b. Construction of a ground water treatment system, on the Caldwell Trucking Company property, to treat the contaminated ground water so that it meets the substantive requirements of the New Jersey Pollution Discharge Elimination System Discharge to Surface Water (NJPDDES-DSW) permit program and any New Jersey surface water discharge regulations, as described in the Revised 1989 ROD.

c. Discharge of the treated effluent to either Deepavaal Brook or the Passaic River.

d. Reduction of the threat posed by direct contact with the Seep and the Tributary to Deepavaal Brook to acceptable levels (1×10^{-6} risk).

e. Institution of a program for the sealing of private wells adversely affected by the contaminated water in the Caldwell Trucking plume, as described in the Revised 1989 ROD. "Adversely affected by the contaminated water" means the water quality in the wells does not meet State and federal drinking water maximum contaminant levels.

Remedy II related requirements pertaining to natural resources injury include:

f. Restoration/replacement of wetlands and uplands injured or destroyed as a result of activities conducted pursuant to the Revised 1989 ROD. This requires delineation of the area(s) adversely affected by these activities, identification of the nature and extent of the injury, and implementation of a restoration and/or replacement plan for natural resource injury and/or loss. Remedy II-related impacts to wetland and upland habitats may result from a variety of factors, including but not limited to: (a) remediation of contaminated areas; (b) construction of extraction wells, access roads, pumphouses, transport lines, etc.; (c) indirect hydrological changes (potential ground water drawdown); and (d) direct hydrological changes (potential ground water mounding or erosion resulting from discharges of treated ground water). All wetlands which are injured and/or destroyed must be restored and/or replaced at a ratio of 2:1; provided, however, that if the Settling Defendants propose restoration and/or replacement of wetlands at less than a 2:1 ratio, they must complete a function and values assessment and receive approval from DOI and the State. Restoration and/or replacement of forested wetlands will not be permitted at less than a 2:1 ratio.

g. Long-term monitoring to ensure that fish, wildlife, and other biota inhabiting the section of Deepavaal Brook from the confluence of the brook with the Tributary to the confluence of the brook with the Passaic River ("the Section of Deepavaal Brook") are not adversely affected by ground water from the Site and/or Remedy II remediation activities and resolution of any adverse impact(s) on fish, wildlife, and other biota.

2. Integration of Design Investigation Ground Water Studies (the "Studies") into a detailed design of the Ground Water Remedy;

3. Remedial Construction of Remedy II;

4. Operation and Maintenance ("O&M") of Remedy II for 30 years, as specified in the Revised 1989 ROD.

5. Implementation of restoration/replacement of wetlands and uplands injured or destroyed as a result of activities conducted pursuant to the Revised 1989 ROD and monitoring of the restoration/replacement to ensure successful vegetative regeneration and functioning capacity of restored areas.

6. Implementation of long-term monitoring to ensure that fish, wildlife, and other biota inhabiting the Section of Deepavaal Brook are not adversely affected by ground water from the Site and/or Remedy II remediation activities. Such long-term monitoring shall include sampling and analysis of surface water and sediments in the Section of Deepavaal Brook for volatile organic substances and metals. If DOI or the State (in its capacity as a trustee for natural resources) determines that ambient water quality criteria set forth in EPA Report # 440/5-86-001, Quality Criteria for Water dated May 1, 1986, updated May 1, 1987, and any further updates thereto, and/or other pertinent toxicological endpoints are exceeded based on review of the surface water and sediment monitoring results, Settling Defendants shall also include biota sampling and analysis as approved by DOI and the State (in its capacity as a trustee for natural resources) in subsequent monitoring. Settling Defendants shall resolve any adverse impact(s) revealed by such sampling and analysis in a reasonable manner approved by DOI and the State.

7. Design and implementation of a program for private well sampling on the perimeter of the Caldwell Trucking contaminant plume to determine whether these wells are contaminated and/or should be sealed in accordance with all applicable federal, state, and local statutes, regulations, and ordinances.

8. Design, implementation, and monitoring of the restoration or replacement of wetlands and uplands injured as a result of the work required pursuant to the Soils Remediation AO.

9. Design and implementation of a plan for long-term operation and maintenance of the landfill constructed pursuant to the Soils Remediation AO.

B. REPORTING REQUIREMENTS

In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA, DOI, and the State two copies each of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule

for implementation of the Remedy II Work or any other work required under this SOW, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants that all the obligations of this Consent Decree have been met. If requested by EPA or the State, Settling Defendants shall also provide briefings for EPA and the State to discuss the progress of the Remedy II Work. After completion of Remedy II Remedial Construction and the work required under the Soils Remediation AO, the parties may agree to a different schedule for periodic reporting.

C. SETTLING DEFENDANTS PROJECT COORDINATOR

1. All aspects of Remedy II Work and other work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Remedy II Work by Settling Defendants), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of a Project Coordinator, the selection of which shall be subject to disapproval by EPA. Within seven days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be their Project Coordinator. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change their Project Coordinator, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA, before their new Project Coordinator performs, directs, or supervises any Remedy II Work under this Consent Decree or any other work required under Sections VI, VII, VIII, or IX of this Consent Decree.

2. If EPA disapproves of the Settling Defendants proposed Project Coordinator, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. The State shall provide EPA's Project Manager with its list of registered contractors, and shall update this list on an annual basis. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling

Defendants may select any contractor from that list that is not disapproved and shall notify EPA, DOI, and the State of the name of the contractor selected as their Project Coordinator within 21 days of EPA's authorization to proceed.

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

D. REMEDIAL DESIGN

1. SITE MANAGEMENT REPORT

a. Within seven days after lodging of this Consent Decree, Settling Defendants shall submit to EPA and the State, two copies each of a Site Management Report ("SMR") for the Remedy II Remedial Design.

b. The SMR shall include a listing of the Project Coordinator, and the identities of contractors and subcontractors and their respective responsibilities for performance of the Remedy II Remedial Design. The responsibilities of each key manager, engineer, architect, scientist or technician shall be specified, as well as a curriculum vita for each. The SMR shall provide for the submittal of supplemental information to EPA prior to the involvement of additional key personnel.

c. After a reasonable opportunity for review and comment by the State, EPA will either approve the SMR for Remedial Design, or require modification of it, in accordance with the procedures set forth in Section XII of this Consent Decree. The requirement that the State be afforded a reasonable opportunity for review and comment upon the SMR shall only apply to contractors that have not been approved by EPA prior to the lodging of this Consent Decree.

2. REMEDY II REMEDIAL DESIGN WORK PLAN

Within 45 days from the date Settling Defendants receive written notification of EPA's approval of the SMR for the Remedy II Remedial Design, Settling Defendants shall submit to EPA, DOI, and the State three copies each of the Remedy II Remedial Design Work Plan. The Remedy II Remedial Design Work Plan shall conform to the "Superfund Remedial Design and Remedial Action Guidance," dated June 1986, and to any additional guidance documents provided by EPA. The Remedy II Remedial Design Work Plan shall include, but not be limited to, the following items:

a. Identification of Remedial Design Tasks

The Remedial Design Remedy II Work Plan shall identify all remedial design tasks to be performed. The Remedial Design tasks shall include the tasks described in Paragraph A.1. of this Statement of Work, and shall also include, but shall not be limited to, the program for sampling of private wells, and the preparation and submission, to EPA, DOI, and the State, of the Remedial Design Reports required by Paragraph D.7. below.

b. Private Well Sampling

In addition to identifying the private well sampling task, a detailed description of a program, including a schedule, for the sampling of private wells on the perimeter of the Caldwell Trucking contaminant plume shall be developed. Sampling and analyses shall be in accordance with the Chemical Data Acquisition Plan in the Ground Water Studies AO.

c. Remedial Design Schedule and Draft Schedule for Remedial Construction, O&M, Restoration/Replacement and Monitoring

i. A schedule for private well sampling and Remedial Design activities, and a draft schedule for Remedy II Remedial Construction, Remedy II O&M, Remedy II uplands and wetlands injury assessment and restoration/replacement, and Deepavaal Brook natural resource related long term monitoring activities shall be prepared and submitted to EPA, DOI, and the State. The schedule shall be in the form of a task/subtask activity bar chart or critical path method sequence of events. Task/subtask duration shall be estimated based upon similar activities and level of effort.

ii. The draft schedule for Remedy II Remedial Construction, Remedy II O&M, Remedy II uplands and wetlands damage assessment and restoration/replacement, and Deepavaal Brook natural resource related long term monitoring activities will be revised during the remedial process.

3. APPROVAL OF REMEDY II REMEDIAL DESIGN WORK PLAN

After a reasonable opportunity for review and comment by DOI and the State, EPA will either approve the Remedy II Remedial Design Work Plan, or will require modification of such plan, in accordance with the procedures set forth in Section XII of this Consent Decree.

4. PRIVATE WELL SAMPLING

Within 30 days of EPA approval of the Remedial Design Work Plan, Settling Defendants shall commence sampling of the private wells as described in the approved Remedial Design Work Plan and shall thereafter implement the private well sampling program in accordance therewith.

5. FINALIZATION OF STUDIES REPORT

The Settling Defendants shall submit the draft Studies Report, required pursuant to paragraph 3.f. of the Ground Water Studies AO Statement of Work, as provided below. The Studies Report shall contain a conceptual design of the Ground Water Remedy detailing the number of wells, well locations, and projected pumping rates, as well as an explanation of the relation of the conceptual design to the design objectives.

a. Settling Defendants shall submit five copies of the draft Studies Report to EPA, and three copies each to the State and to DOI, for review and comment.

b. After a reasonable opportunity for review and comment by the State and DOI, EPA will provide comments on the draft Studies Report.

c. Settling Defendants shall finalize the Studies Report within 30 days from receipt of comments provided by EPA on the draft Studies Report.

d. After a reasonable opportunity for review and comment by the State and DOI, EPA will either approve the Studies Report or will require modification of it, in accordance with the procedures set forth in Section XII of this Consent Decree.

e. Settling Defendants shall incorporate the results of the approved Studies Report into the Remedy II Remedial Design.

6. REMEDIAL DESIGN

Except for the Private Well Sampling described in Paragraph 4, Settling Defendants shall commence performance of the tasks identified in the Remedy II Remedial Design Work Plan upon written approval from EPA of the Studies Report. The findings and results of the Design Investigation Ground Water Studies shall be used in developing the detailed Remedial Design. In developing the detailed Remedial Design, Settling Defendants shall also attempt to avoid and/or minimize adverse impacts to natural resources, particularly wetlands and uplands, wherever practicable consistent with the requirements of Remedy II and other valid concerns regarding design and implementation of

Remedy II. The Remedial Design shall include, but shall not be limited to, the following:

a. Ground Water Recovery Well System, as described in Paragraph A.1.a.

b. Ground Water Treatment System, as described in Paragraph A.1.b. The design shall detail the treatment plant equipment and facilities required, including any necessary air pollution control equipment.

c. Effluent Discharge, as described in Paragraph A.1.c. The design shall identify the location(s) of the discharge point or points selected and detail the method of discharge.

d. Seep Risk Reduction, as described in Paragraph A.1.d.

e. Sealing of Private Wells, as described in Paragraph A.1.e.

f. Restoration/Replacement of Uplands and Wetlands affected by Remedy II activities, as described in subparagraph A.1.f.

g. Long Term Monitoring relating to determining impacts on fish, wildlife, and biota inhabiting Deepavaal Brook, as described in paragraph A.6.

7. REMEDIAL DESIGN REPORTS

The Remedy II Remedial Design Work shall include the preparation of the following Remedial Design Reports or submittals: a Preliminary Design Report (35% completion); a Pre-Final Report (90% completion); and a Final Design Report (100% completion). The Reports shall be submitted to EPA, DOI, and the State in accordance with the schedule set forth in the approved Remedy II Remedial Design Work Plan. The Settling Defendants shall submit five copies of each report to EPA and the State and three copies to DOI for review and comment. Each Remedial Design Report shall include a discussion of the design criteria and objectives, with emphasis on the capacity and ability to meet design objectives successfully. Each Report shall also include the plans and specifications that have been completed, along with a design analysis. The design analysis shall provide the rationale for the plans and specifications, including supporting calculations and documentation of how these plans and specifications will meet the requirements of the Revised 1989 ROD. Each Report shall include the following items (to the extent that work has been performed regarding these items):

a. Sampling, Analysis and Monitoring Plan

A Sampling, Analysis and Monitoring Plan ("SAMP") for sampling, analysis, testing and monitoring to be performed during the Remedial Construction, O&M, and Ground Water Monitoring phases of Remedy II Work (including the monitoring required for subparagraph A.1.g and paragraph A.6).

i. All sampling and monitoring shall be performed in accordance with the "Region II CERCLA Quality Assurance Manual," EPA Region II, Revision 1, dated October 1989, and all other guidance as specified in Section IX (QA/QC) of this Consent Decree. All testing methods and procedures must be fully documented and referenced to established methods or standards.

ii. The SAMP shall include, at a minimum, the following items:

(1) A map depicting sampling locations;

(2) A detailed description of the sampling, analysis, testing and monitoring to be performed, including sampling methods, analytical and testing methods, sampling locations and frequency of sampling;

(3) Additional sampling locations, testing, monitoring and analyses subsequently identified shall be submitted as an addendum to the SAMP; and

(4) Proposed construction materials such as metals and plastics shall be tested for compatibility with the intended environment unless their suitability is already well established and documented to the satisfaction of EPA.

iii. The SAMP shall include an environmental monitoring program to be implemented during the Remedial Construction. Sampling shall be specifically timed to document any and all environmental impacts of the Remedial Construction.

iv. The SAMP shall include testing methods appropriate to Remedial Construction including, at a minimum, testing of Remedial Construction materials prior to use, and testing of constructed remedial components to ensure that they meet design specifications.

b. Construction Quality Assurance Project Plan

The Construction Quality Assurance Project Plan ("CQAPP") for sampling, analysis, testing and monitoring to be performed during the Remedial Construction phase of Remedy II Work.

i. The CQAPP shall address quality assurance requirements and standards relating to construction operations including, at a minimum, decontamination, construction, and installation of Remedy II. Quality assurance items to be addressed include, at a minimum, the following:

- (1) Inspection and certification;
- (2) Measurement and daily logging;
- (3) Field performance and testing;
- (4) As-built drawings and logs; and
- (5) Testing of the Remedy II Work and the criteria for passing or failing.

ii. Settling Defendants shall require full CLP deliverables from any laboratory analyses needed during the Remedial Construction phase of Remedy II Work, unless this request is waived by EPA. Upon EPA request, Settling Defendants shall submit to EPA the full CLP documentation for this sampling.

iii. The CQAPP shall be completed in accordance with the "Region II CERCLA Quality Assurance Manual," EPA-Region II, Revision 1, dated October 1989, and all other guidance as specified in Section IX (QA/QC) of this Consent Decree.

iv. In order to provide quality assurance and maintain quality control with respect to all samples collected during the Remedial Construction phase of the Remedy II Work, Settling Defendants shall ensure the following:

(1) The CQAPP shall include, at a minimum, the following items:

- (a) Title Page
- (b) Table of Contents
- (c) Project Description
- (d) Project Organization and Responsibility
- (e) Quality Assurance Objectives
- (f) Sampling Procedures
- (g) Sample Custody
- (h) Calibration Procedures and Frequency
- (i) Analytical Procedures
- (j) Data Reduction, Validation and Reporting
- (k) Internal Quality Control Checks
- (l) Performance and Systems Audits
- (m) Preventive Maintenance
- (n) Specific Routine Procedures Used to Assess Data Precision, Accuracy and Completeness
- (o) Corrective Action

(p) Quality Assurance Reports to Management

(2) Settling Defendants shall use quality-assurance procedures and chain-of-custody procedures in accordance with standard EPA protocols.

(3) Settling Defendants shall ensure, prior to engagement of a laboratory for the analysis of samples, that the laboratory is either a participant in good standing in EPA's Contract Laboratory Program ("CLP"), or can demonstrate its ability to perform all tasks required under the CLP.

(4) In the event that the laboratory utilized by Settling Defendants is not CLP-certified for a relevant set of parameters, Settling Defendants shall ensure that the laboratory will analyze performance evaluation samples submitted by EPA for those parameters for quality assurance purposes.

(5) Settling Defendants shall ensure that the laboratory utilized for analyses of samples performs all analyses according to accepted EPA methods as documented in the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and the "Contract Lab Program Statement of Work for Inorganic Analysis," dated July 1988, or other EPA approved methods.

(6) Upon receipt from the laboratory, Settling Defendants shall validate all analytical data and shall submit to EPA the validation package (checklist, report and Form #1 containing the final data), prepared in accordance with the provisions of paragraph D.7.b.iv.(7), below.

(7) Settling Defendants shall ensure that all analytical data are validated according to the procedures stated in the "EPA Region II Contract Lab Program Organics Data Review and Preliminary Review (SOP #HW-6, Revision 7)," dated March 1990, or the latest revision, and the "Evaluation of Metals Data for the Contract Laboratory Program (SOP #HW-2, Revision 10)," dated February 1990 or the latest revision, or EPA approved equivalent procedures.

(8) Upon request by EPA, Settling Defendants shall promptly provide EPA with all unvalidated results of all sampling and/or tests or other data generated by Settling Defendants with respect to implementation of this Consent Decree. Should EPA elect to use unvalidated data for a purpose other than for oversight of data quality, EPA shall inform the Settling Defendants in writing.

(9) Settling Defendants shall require full CLP deliverables from the laboratory for analytical data collected during the activities required by this Consent Decree, unless otherwise approved by EPA in writing. Upon EPA request, Settling Defendants shall submit to EPA the full CLP documentation for sampling and analysis conducted during the Remedial Construction, O&M, and Ground Water Monitoring phases of the Remedy II Work.

(10) Settling Defendants shall ensure that all contracts with the laboratory utilized by Settling Defendants for analysis of samples provide for access of United States Government personnel and authorized representatives of the United States for the purpose of ensuring the accuracy of laboratory results related to the Site.

c. Health and Safety/Contingency Plan

A Health and Safety/Contingency Plan ("HASCP") for Remedial Construction phase of the Remedy II Work shall be developed by Settling Defendants. The Plan shall address health and safety measures to be implemented and observed by construction personnel, as well as recommended health and safety measures for the adjacent community and general public, together with a description of the program for informing the community of these recommendations. The HASCP shall satisfy the requirements of the "Occupational Safety and Health Guidance for Hazardous Waste Site Activities," (October 1985, DHH 5 NIOSH Publication No. 85-115), and the Occupational Safety and Health Administration, U.S. Department of Labor ("OSHA") requirements cited below.

i. Site activities concerning inspections, investigations and remedial activities shall be performed in such a manner as to ensure the safety and health of personnel so engaged. All Site activities shall be conducted in accordance with all pertinent general industry (29 CFR 1910) and construction (29 CFR 1926) OSHA standards, as well as any other applicable State and municipal codes or ordinances. All Site activities shall comply with those requirements set forth in OSHA's final rule entitled "Hazardous Waste Operations and Emergency Response," 29 CFR 1910.120, as set forth in the Federal Register of March 6, 1989.

ii. The HASCP shall include, at a minimum, the following items:

(1) Plans showing the location and layout of any temporary facilities to be constructed on or near the Site.

(2) Description of the known hazards and evaluation of the risks associated with the Site and the potential health impacts related to the Site activities.

(3) List of key personnel and alternates responsible for Site safety, response operations and protection of the public.

(4) Description of levels of protection (based on specified standards) to be utilized by all personnel.

(5) Delineation of work, decontamination and safe zones, and definitions of the movement of zones.

(6) Description of decontamination procedures for personnel and equipment, and handling and removal of disposable clothing or equipment.

(7) Incidental emergency procedures which address emergency care for personnel injuries and exposure problems, and containment measures.

(8) Description of the personnel medical surveillance program in effect.

(9) Description of monitoring for personnel safety.

(10) Description of routine and special personnel training programs.

d. Plan for Obtaining Access and Other Approvals

i. This plan shall address any approvals which Settling Defendants will require to comply with this Consent Decree, with the exception of those approvals required from the United States. The plan shall detail how such approvals will be sought, and will include a schedule for obtaining all necessary approvals. Such approvals will include:

(1) the permission of owners of property near the Site regarding access to conduct sampling, monitoring or other activities;

(2) easements needed for the implementation of Remedy II. Legal descriptions of property or easements to be acquired shall be provided.

(3) approvals of off-site waste management facilities or recycling facilities to accept materials from the Site;

ii. The plan shall be amended if subsequent approvals are required.

e. Other Plans and Submittals

i. Completed Federal and State environmental permit applications (including any required supplements) that would be required if the selected remedial alternatives were not conducted under the authority of CERCLA. Permit applications for Remedy II Work to be performed entirely at the site should not be signed.

ii. A plan for photographic documentation of the Remedial Construction work, to be performed in accordance with paragraph E.3, below.

iii. A preliminary Operation and Maintenance Plan, for the O&M phase of the Remedy II Work, to be performed in accordance with paragraph F.1, below. Activities that will not continue after the completion of the Remedial Construction should not be addressed. However, O&M activities that will continue after the completion of Remedial Construction (i.e., operation of the ground water remediation system) shall be addressed here, even for the periods when these activities may occur concurrently with remedial construction activities.

iv. Cost estimates for Remedial Construction and O&M. The cost estimates shall include a detailed and itemized estimate of construction costs, and of the proposed annual O&M costs. These estimates shall be included in the Preliminary Design Report and in subsequent Remedial Design Reports with any necessary revisions. Supporting data and sample calculations shall be provided.

v. A schedule for Remedial Construction and Deepavaal Brook natural resource related long-term monitoring activities and a draft schedule for O&M and Remedy II uplands and wetlands injury assessment and restoration/replacement activities. (See paragraph D.2.c., above.)

vi. A professional engineer must certify those submittals and applications where such certification is required by New Jersey law.

8. PRELIMINARY DESIGN REPORT: ADDITIONAL REQUIREMENTS

The Preliminary Design Report shall also include:

a. Process flow diagrams and preliminary construction drawings showing general arrangement of all Remedy II Work proposed, including, but not limited to, recovery wells, well locations, pumping rates, treatment plant equipment and facilities, piping, and effluent discharge location.

b. Table of Contents for the specifications, including a listing of specifications items from the Construction Specifications Institute master format expected to be included in the construction specifications. This master format is presented in the Construction Specifications Institute's "Manual of Practice", 1985 edition, available from the Construction Specifications Institute, 601 Madison Street, Alexandria, Virginia 22314.

c. Engineering plans representing an accurate identification of existing Site conditions, and an illustration of the Remedy II Work proposed. Typical items to be provided on such drawings include, at a minimum, the following:

i. Title sheet including the title of the project, a key map, the name of the designer, sheet index, and EPA Project identification.

ii. All property data including owners of record for all properties within 200 feet of the Site and any off-site areas required for implementation of the remedy.

iii. The distance and bearing of all property lines that identify and define the project Site and any areas required for implementation of the remedy.

iv. All easements, rights-of-way and reservations.

v. All structures, wells, facilities, controls, equipment and features, existing and proposed, including interim remedial measures.

vi. All utilities, existing and proposed;

vii. A topographic survey, including existing and proposed contours and spot elevations, based on U.S. and New Jersey Geological Survey data.

viii. Location and identification of all significant natural features including, inter alia, wooded areas, water courses, marshes and depressions.

ix. Flood hazard data and delineation, where applicable.

x. North arrow, scale, sheet numbers and the person responsible for preparing each sheet;

xi. Staging and stockpiling areas;

xii. Miscellaneous detail sheets; and

xiii. Definitions of all symbols and abbreviations.

d. Items not typically required to be included in the preliminary phase of design drawings include: electrical drawings; mechanical drawings; heating, ventilation, and air conditioning drawings; structural drawings; and miscellaneous construction details.

9. PRE-FINAL DESIGN REPORT: ADDITIONAL REQUIREMENTS

The Pre-Final Design Report shall also include:

a. Survey work that is appropriately marked, recorded and interpreted for mapping, property easements and design completion.

b. Construction drawings of all proposed Remedy II Work facilities, equipment, improvements, details and all other construction and installation items to be developed in accordance with the current standards and guidelines of the New Jersey State Board of Professional Engineers and Land Surveyors. Drawings shall be of standard size, approximately 24" x 36"; half scale drawings (12" x 18") shall also be provided. A list of drawing sheet titles will be provided.

c. Engineering plans indicating, at a minimum, the following:

- i. All utilities, existing and proposed.
- ii. Staging and stockpiling areas.
- iii. Security.
- iv. Roadways.
- v. Electrical, mechanical and structural drawings.
- vi. Miscellaneous detail sheets.

10. APPROVAL OF REMEDIAL DESIGN REPORTS

a. EPA, after a reasonable opportunity for review and comment by the State and DOI, will review and comment on the Preliminary and Pre-Final Design Reports. Settling Defendants shall make those changes required by EPA's comments in the succeeding design report (e.g., changes required by comments on the Preliminary Design Report shall be made in the Pre-Final Design Report) in accordance with the procedures set forth in Section XII of this Consent Decree. With regard to those tasks

identified in subparagraphs D.6.f and g, EPA's comments will be based on the comments submitted by DOI and the State to the extent such comments do not adversely affect implementation of the Remedy I Remedial Action or the Remedy II Remedial Action.

b. After a reasonable opportunity for review and comment by the State and DOI, EPA will either approve the Final Design Report or will require modification of it, in accordance with the procedures set forth in Section XII of this Consent Decree. With regard to those tasks identified in subparagraphs D.6.f and g, EPA's approval or required modifications of the Final Design Report will be based on the comments submitted by DOI and the State to the extent such comments do not adversely affect implementation of the Remedy I Remedial Action or the Remedy II Remedial Action.

11. IMPLEMENTATION OF LONG-TERM MONITORING IN DEEPAVAAL BROOK

Within 30 days after EPA's approval of the Final Design Report (or portion relating to subparagraph D.6.g), Settling Defendants shall commence Deepavaal Brook natural resource related long-term monitoring and shall thereafter implement the requirements of subparagraph A.1.g as further described in paragraph A.6.

12. REMEDY II REMEDIAL CONSTRUCTION SITE MANAGEMENT PLAN

Within 60 days after EPA's approval of the Final Design Report, Settling Defendants shall submit, for EPA and State review and comment and EPA approval, a Site Management Plan ("SMP") for Remedy II Remedial Construction activities. This SMP shall include identification of the Remedy II remedial construction contractor, its qualifications, and its technical proposal for the Remedy II Remedial Construction activities. The construction contractor shall be chosen from the list of approved contractors published by the State. The responsibilities of each key manager, engineer, scientist or technician shall be specified, as well as a curriculum vita for each. The SMP shall provide for the submittal of supplemental information to EPA prior to the involvement of additional key personnel.

B. REMEDIAL CONSTRUCTION AND RESTORATION

1. REMEDY II REMEDIAL CONSTRUCTION WORK PLAN

a. Within 60 days after approval of the SMP for Remedy II Remedial Construction activities, Settling Defendants shall submit to EPA and the State a Remedy II Remedial Construction Work Plan ("RCWP"). The RCWP for Remedial Construction shall include the following items:

i. Any requests for modification of the approved Remedy II Final Design Report, or modification of the construction schedule developed under paragraph D.7.e.v., above, based on construction methods identified by the construction contractor(s), or other new information.

ii. Approved HASCP for Remedy II Remedial Construction.

iii. Identification of all off-site facilities proposed to be used to manage hazardous substances, pollutants, contaminants, or other materials from the Site resulting from the Remedial Construction Work. For each facility, the proposed materials and methods of management shall be described.

iv. Discussion of the methods by which construction operations shall proceed. Discussion shall include the following:

(1) Timing of and manner in which, inter alia, decontamination, construction, monitoring, security measures, and restoration of areas impacted by Remedial Construction activities shall be sequenced.

(2) Preconstruction planning/preparation including Site security, utilities, decontamination facilities, construction trailers, equipment storage and construction of roadways.

(3) Coordination with local authorities regarding contingency planning and potential traffic obstruction.

(4) Entry and access to the Site during the construction period(s) and periods of inactivity, including provisions for decontamination.

v. Discussion of construction quality control, including:

(1) Methods of performing the quality control inspections, including when inspections should be made and what to look for;

(2) Control testing procedures for each specific test. This includes information which authenticates that personnel and laboratories performing the tests are qualified and the equipment and procedures to be used complies with applicable standards;

(3) Procedures for scheduling and managing submittals, including those of subcontractors, off-site fabricators, suppliers, and purchasing agents; and

(4) Reporting procedures including frequency of reports and report formats.

b. After a reasonable opportunity for review and comment by the State, EPA will either approve the Remedy II RCWP or require modification of it in accordance with the procedures set forth in Section XII of this Consent Decree. EPA will either approve, disapprove or require modification of any requests for modification of the Final Design Report and construction schedule in accordance with the procedures set forth in Section XII of this Consent Decree.

c. At least 30 days prior to initiation of any construction activities, the Settling Defendants will submit the name and qualifications of the Independent Quality Assurance Team ("IQAT") for approval by EPA, which shall not be unreasonably withheld. The IQAT is used to provide confidence to the Settling Defendants that Remedy II is constructed to meet project requirements. The IQAT implements the Construction Quality Assurance Plan by selectively testing and inspecting the work of the Remedial Construction contractors and subcontractors. The IQAT is required to be "independent" and autonomous from the Remedial Construction contractors and subcontractors, and may come from within the ranks of the Settling Defendants' own staff, the Remedial Design Professional organization, or through a separate contractual relationship with a private consulting entity. EPA's approval will be based on professional and ethical reputation, previous experience in the type of quality assurance activities to be implemented, and demonstrated capability to perform the required activities. In addition, EPA approval will be based on the requirement for independence between the IQAT and the Remedial Construction contractors and subcontractors. The submitted information about the IQAT contractor will include a written statement of qualification in sufficient detail to allow EPA to make a full evaluation of the contractor's qualifications and facilities.

2. PERFORMANCE OF REMEDIAL CONSTRUCTION WORK

a. Upon receipt of EPA's written approval of the Remedy II RCWP, Settling Defendants shall perform the Remedy II Remedial Construction Work in accordance with the RCWP and the approved Final Design Report, which includes the approved Remedial Construction schedule.

b. During performance of the Remedy II Remedial Construction, Settling Defendants may identify and request approval for field changes to the approved RCWP, Final Design Report and construction schedule as necessary to complete the Remedy II Work. EPA will either approve, disapprove or require modification of any requests for field changes in accordance with the procedures set forth in Section XII of this Consent Decree.

3. PHOTOGRAPHS

Settling Defendants shall furnish photographs to EPA that record the progress of construction including, at a minimum, the important features of the Site prior to the commencement of the Remedy II Work, construction activities for the various tasks, and the appearance of the Site after the construction has been completed. Such photographs or slides shall be developed expeditiously and shall be submitted as part of the monthly progress report for the month in which the photographs are developed.

4. NOTICE OF COMPLETION AND FINAL REPORT FOR REMEDIAL CONSTRUCTION

a. Within forty-five (45) calendar days of the completion of Remedial Construction, Settling Defendants shall submit to EPA and the State a Notice of Completion and Final Report for the Remedial Construction. The Notice of Completion shall be signed by a qualified licensed professional engineer meeting any and all requirements of applicable Federal, State and local laws, and shall certify that the Remedy II Remedial Construction Work has been completed in full satisfaction of the requirements of this Consent Decree, this Statement of Remedy II Work, and all plans, specifications, schedules, reports and other items developed hereunder. The Final Report shall summarize the Remedy II Remedial Construction work performed. If Remedy II as implemented differs in any way from the approved plans and specifications of the Final Design Report, such modifications shall be reported, and "as built" plans and specifications shall be provided showing all such modifications. The reasons for all such modifications shall be described in detail.

b. After a reasonable opportunity for review and comment by the State, EPA will determine whether the Remedy II Remedial Construction activities or any portion(s) thereof have been completed in accordance with the performance standards, specifications and reports required by this Consent Decree. If not, EPA will notify Settling Defendants in writing of those tasks which must be performed to complete the Remedial Construction. Settling Defendants shall then implement the specified activities and tasks in accordance with the specifications and schedules established by EPA and shall then submit a further report on the specified activities and tasks and certification signed by a licensed professional engineer, within thirty (30) days after completion of the specified activities and tasks.

5. **REMEDY II UPLANDS AND WETLANDS RESTORATION/REPLACEMENT
FOR NATURAL RESOURCE INJURY**

a. No later than 120 days prior to the scheduled completion date of the construction phase of the Remedy II Work, Settling Defendants shall submit to EPA, DOI, and the State a plan and schedule for implementation of restoration/replacement of wetlands and uplands injured or destroyed as a result of Remedy II remedial construction activities to the extent such restoration/replacement is feasible at this stage consistent with the Remedy II O&M and Ground Water Monitoring requirements and the Final Design Report. The plan and schedule shall also include a description of a monitoring program to ensure successful vegetative regeneration and functioning capacity of such restored and/or replaced wetlands and uplands. At this time, the Settling Defendants shall also submit a plan and schedule for Remedy II uplands and wetlands damage assessment and restoration/replacement to be conducted during the Remedy II operation and maintenance period.

b. After review and comment by DOI and the State, EPA will either approve, or require modification of, such plans and schedules, in accordance with the procedures set forth in Section XII of this Consent Decree. With respect to natural resource restoration/replacement matters that do not adversely affect the implementation of the Remedy I or Remedy II Remedial Action, EPA will base its approval or required modifications on the comments of DOI and the State.

c. Upon approval of the plans and schedules by EPA, Settling Defendants shall implement the plans in accordance with the schedules and take all necessary actions to assure that the natural resource restoration and/or replacement programs are functioning effectively.

F. **REMEDY II OPERATION AND MAINTENANCE AND
GROUND WATER MONITORING**

Upon EPA's certification of completion of the Remedy II Remedial Construction Work, Settling Defendants shall perform Remedy II O&M and Ground Water Monitoring activities for a period of 30 years. These activities shall be performed in accordance with the approved Remedy II O&M and Ground Water Monitoring Plans, which includes O&M and Ground Water Monitoring Pumping rates shall be in accordance with the approved Remedy II Final Design Report. Settling Defendants shall perform O&M and Ground Water Monitoring during the 30 years in a manner which will implement the Revised 1989 ROD and achieve the design objectives described in paragraphs A.1. and D.6. During O&M, the system's performance will be carefully monitored on a regular basis, and upon EPA and State approval, may be adjusted by the performance data collected.

1. REMEDY II O&M AND GROUND WATER MONITORING PLANS

a. No later than 120 days prior to the scheduled completion date of the construction phase of the Remedy II Work, Settling Defendants shall submit to EPA and the State an O&M and Ground Water Monitoring Plans for the O&M and Ground Water Monitoring phase of the Remedy II Work.

b. The Remedy II O&M and Ground Water Monitoring Plans shall include, at a minimum, the following:

i. A Site Management Plan for O&M and Ground Water Monitoring activities. The SMP shall include the same requirements as in paragraph D.12., above, except they shall be for O&M and Ground Water Monitoring activities rather than Remedial Construction activities. The SMP for O&M and Ground Water Monitoring activities shall also identify all off-site facilities proposed to be used to manage hazardous substances, pollutants, contaminants, or other materials from the Site resulting from the O&M and Ground Water Monitoring work. For each facility, the proposed materials and methods of management shall be described.

ii. An O&M Contingency Plan to accommodate potential modifications to the system. Modifications, upon approval by EPA, may include, but are not limited to, the following:

(1) Alternating pumping at wells to eliminate stagnation points; and

(2) Pulse pumping to allow aquifer equilibration and encourage adsorbed contaminants to partition into ground water.

iii. A Sampling, Analysis and Monitoring Plan for O&M and Ground Water Monitoring activities. The SAMP shall include the same requirements as in paragraph D.7.a, above, except they shall be for O&M and Ground Water Monitoring activities rather than Remedial Construction activities.

iv. A Quality Assurance Project Plan ("QAPP") for O&M and Ground Water Monitoring activities. The QAPP shall include the same requirements as in paragraph D.7.b, above, except they shall be for O&M and Ground Water Monitoring activities rather than Remedial Construction activities. Settling Defendants shall require full CLP deliverables from the laboratory for the analytical data collected during O&M and Ground Water Monitoring activities, unless otherwise approved, in writing, by EPA. Upon EPA request, Settling Defendants shall submit to EPA the full CLP documentation for this sampling.

v. A Health and Safety/Contingency Plan for O&M and Ground Water Monitoring activities. The HASCP shall include the same requirements as in paragraph D.7.c, above, except they shall be for O&M and Ground Water Monitoring activities rather than Remedial Construction activities.

vi. A description of the routine O&M and Ground Water Monitoring for the remedial systems including, at a minimum, Site security, and if necessary, waste storage facilities, together with their decommissioning.

vii. A schedule for O&M and Ground Water Monitoring activities, that includes, at a minimum, quarterly Ground Water Monitoring.

c. After a reasonable opportunity for review and comment by the State, EPA will either approve the Remedy II O&M and Ground Water Monitoring Plans, or require modification of them, in accordance with the procedures set forth in Section XII of this Consent Decree.

2. PERFORMANCE OF THE OPERATION AND MAINTENANCE WORK

Settling Defendants shall perform the Remedy II O&M Work and the Ground Water Monitoring Work for 30 years in conformance with the Remedy II O&M and Ground Water Monitoring Plans, upon approval of the O&M and Ground Water Monitoring Plans. The Settling Defendants shall perform the Remedy II O&M Work so that the Ground Water Treatment Plant will meet effluent discharge limits at all times throughout each year of operation.

3. OPERATION AND MAINTENANCE REPORTS

a. The Remedy II O&M Work shall include the preparation of quarterly Ground Water Monitoring and Progress Reports presenting the following:

i. Data collected from any and all sampling during the O&M and Ground Water Monitoring phases of the Remedy II Work (see paragraphs F.1 and F.2) with a discussion of the work and an interpretation of the testing results.

ii. Based on the evaluation of testing results, Settling Defendants may propose to EPA, for EPA approval, modifications to the extraction system. Proposed modifications to the O&M Work shall be made in conformance with the approved O&M Contingency Plan.

b. Quarterly Ground Water Monitoring and Progress Reports shall be submitted to EPA and the State in accordance with the schedule set forth in the approved O&M and Ground Water Monitoring Plans.

c. EPA will either approve each Ground Water Monitoring and Progress Report or will require modification of it in accordance with the procedures set forth in Section XII of this Consent Decree.

d. Within 180 days prior to the completion of the Remedy II O&M Work, Settling Defendants shall submit, for EPA, DOI, and State review and comment, plans for decommissioning of the Ground Water Remediation System, restoration of affected properties, and, to the extent not already restored or replaced through activities conducted pursuant to paragraph E.5 above including restoration or replacement activities during the Remedy II O&M period, implementation of restoration/replacement of wetlands and uplands injured or destroyed as a result of Remedy II activities. The plan for implementation of restoration/replacement of wetlands and uplands shall include a schedule for restoration/replacement activities and shall include a description of a monitoring program to ensure successful vegetative regeneration and functioning capacity of restored or replaced areas. After a reasonable opportunity for review and comment by DOI and the State, EPA will either approve, or require modification of, the plans for decommissioning, restoration of affected properties, and implementation of restoration/replacement of the wetlands and uplands and monitoring thereof, in accordance with the procedures set forth in Section XII of this Consent Decree. With regard to matters related to restoration/ replacement of wetlands and uplands and monitoring thereof which do not affect the implementation of the Remedy II Remedial Action, EPA's approval or required modifications thereof will be based on the comments submitted by DOI and the State.

G. SOILS REMEDIATION-RELATED WORK ITEMS

1. RESTORATION/REPLACEMENT OF WETLAND NATURAL RESOURCES ADVERSELY AFFECTED BY WORK REQUIRED UNDER THE SOILS REMEDIATION AO.

a. Prior to or within 30 days of entry of the Consent Decree, Settling Defendants shall submit to EPA, DOI, and the State a wetlands restoration/replacement plan for restoration/replacement of the approximately 1.9 acres of wetlands on the Caldwell Trucking property that are destroyed or injured as a result of the remedial construction activities required under the Soils Remediation AO ("Soils Remediation AO related Wetlands R/R Plan"). The plan shall provide for off-site restoration or creation of wetlands. The site for the restoration or creation of wetlands shall be subject to the approval of DOI and the State. The site shall be within the Passaic River watershed, unless DOI and the State approve a site in another watershed. The wetlands shall be replaced at a ratio ranging from 2:1 to 1:1. Should the Settling Defendants propose

to provide a replacement ratio of less than 2:1, the Settling Defendants shall include in the plan a function and values assessment which provides justification for their proposal. The plan shall also include a schedule for the restoration/replacement activities and a description of a monitoring program to ensure successful vegetative regeneration and functioning capacity of the restored or replaced acres of wetlands. The off-site restoration or creation of wetlands shall be conducted by the Settling Defendants, rather than through a monetary payment to another entity, unless a monetary payment to another entity is approved by DOI and the State. The required restoration or creation of wetlands, or any monetary payment approved in lieu thereof, shall be performed in accordance with applicable federal and state laws and regulations, including, but not limited to, N.J.S.A. 13:9B-1 et seq., and its implementing regulations, and 43 C.F.R. Part 11.

b. EPA, DOI, and the State will either approve the Soils Remediation AO related Wetlands R/R Plan or require modification of the plan.

c. Upon approval of the Soils Remediation AO related Wetlands R/R Plan by EPA, DOI, and the State, the Settling Defendants shall implement the Soils Remediation AO related wetlands restoration/replacement plan in accordance with the approved schedule and shall take all necessary actions to assure that the restoration and/or replacement program is functioning effectively.

d. Nothing in this SOW, including paragraph G.1, shall be construed as requiring approval of the Soils Remediation AO related Wetlands R/R Plan (which is to provide for off-site restoration/replacement of wetlands) prior to the destruction of, or injury to, the approximately 1.9 acres of wetlands on the Caldwell Trucking property necessary for implementation of the Soils Remediation AO.

2. RESTORATION/REPLACEMENT FOR UPLAND NATURAL RESOURCES ADVERSELY AFFECTED BY WORK REQUIRED UNDER THE SOILS REMEDIATION AO.

a. At least 180 days prior to completion of the remedial construction activities required under the Soils Remediation AO, in conjunction with the Site Maintenance Plan submission required pursuant to subparagraph A.7.d of the Soils Remediation AO SOW, Settling Defendants shall submit to EPA, DOI, and the State for review and comment a plan for restoration/replacement of the uplands that are destroyed or injured as a result of the remedial construction activities required under the Soils Remediation AO ("Soils Remediation AO related Uplands R/R Plan"). This Soils Remediation AO related Uplands R/R Plan shall (a) provide a finalized delineation of the

impacts on uplands, including old field, scrub/shrub, and other non-wetland vegetation, resulting from the work done pursuant to the Soils Remediation AO, including a comparison with the pre-site clearing delineation of uplands and the pre-site clearing projected upland impacts and (b) provide for on-site habitat creation and/or enhancement at a 1:1 replacement ratio for upland habitat that was removed or injured by the remedial construction activities required under the Soils Remediation AO, including planting the on-site RCRA landfill cap with desirable wildlife food and cover species to the extent consistent with cap maintenance. The plan shall also include a schedule for the restoration/replacement activities and a description of a monitoring program to ensure successful vegetative regeneration and functioning capacity of the restored or replaced acres of uplands.

b. After review and comment by DOI and the State, EPA will either approve the Soils Remediation AO related Uplands R/R Plan or require modifications of it in accordance with the procedures set forth in Section XII of this Consent Decree. With regard to restoration/replacement matters that do not adversely affect implementation of the Remedy II Remedial Action, the soils remediation work accomplished pursuant to the Soils Remediation AO, or Soils Remediation O&M, EPA's approval or required modifications of the Soil Remediation AO related Uplands R/R Plan will be based on the comments submitted by DOI and the State.

c. Upon approval of the Soils Remediation AO related Uplands R/R Plan by EPA, Settling Defendants shall implement the Soil Remediation AO related Uplands R/R Plan in accordance with approved schedule and shall take all necessary actions to assure that the restoration and/or replacement program is functioning effectively.

3. SOILS REMEDIATION OPERATION & MAINTENANCE (O&M)

a. As provided in subparagraph A.7.e of the Soils Remediation AO SOW, at least 30 days prior to completion of construction activities required by the Soils Remediation AO, Settling Defendants shall submit to EPA and the State a long term Soils Remediation Operation & Maintenance ("O&M") Plan for Soils Remediation, which will include an O&M schedule. The Soils Remediation O&M Plan shall provide for site maintenance after the first year following construction, as well as any other necessary Soils Remediation related O&M activities. After a reasonable opportunity for review and comment by the State, EPA will either approve, or require modification of the Soils Remediation O&M Plan, in accordance with the procedures set forth in Section XII of this Consent Decree.

b. Upon authorization to proceed from EPA, Settling Defendants shall implement the work required under the Soils

Remediation O&M Plan for 30 years to ensure the integrity of the Soils Remediation Remedy.

H. DECOMMISSIONING AND RESTORATION

After Settling Defendants complete Remedy II O&M Work, and upon direction by EPA, Settling Defendants shall remove and decommission the ground water recovery wells, associated piping, and ground water treatment system ("Ground Water Remediation System"), in accordance with the Remedy II decommissioning plan approved under subparagraph F.3.d. Following the decommissioning, Settling Defendants shall restore all properties affected by the Remedy II Remedial Action, in accordance with the Remedy II restoration plan for restoration of such properties approved under subparagraph F.3.d. Such decommissioning and restoration shall be required, upon the direction by EPA, as part of Remedy II Work, but shall not be considered part of the Remedy II Remedial Action. Settling Defendants shall also implement the plan for restoration/replacement of wetlands and uplands injured or destroyed as a result of Remedy II activities approved under subparagraph F.3.d. This plan is for any injured or destroyed wetlands and uplands not restored or replaced pursuant to paragraph E.5, i.e. not restored or replaced prior to the completion of Remedy II O&M. Settling Defendants shall take all necessary actions to assure that the restoration and/or replacement program developed under F.3.d is functioning effectively.

I. NOTICE OF COMPLETION OF REMEDY II REMEDIAL ACTION

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

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Remedy II Remedial Action has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken to complete the Remedy II Remedial Action. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the Remedy II SOW or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) of this Consent Decree.

2. If EPA concludes, based on the initial or any subsequent request for Certification of Completion of the Remedy II Remedial Action by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Remedy II Remedial Action has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

Appendix VII

NJDEPE acknowledges that some or all of the Settling Defendants have performed, or are engaged in performing, investigative activities relating to the Site. Commencing forthwith, the Settling Defendants may conduct an additional investigation to identify entities who are potentially responsible under the law for contributing to the costs of the remedial actions determined by the Revised 1986 ROD and the Revised 1989 ROD and the obligations imposed by this consent decree ("Investigation"). The Settling Defendants, and, to the extent its resources shall permit, NJDEPE, will cooperate to the fullest extent possible with each other concerning the Investigation. In accordance with applicable law, NJDEPE will provide the Settling Defendants with access to all non-privileged information concerning persons the Settling Defendants believe to be potentially responsible for contaminating the Site.

At any time after entry of this consent decree, the Settling Defendants may submit to NJDEPE a list of persons believed to be responsible by law for any hazardous substances discharged at the Site, along with any and all explanation of the involvement of such persons with the Site. Contingent upon NJDEPE's available resources, NJDEPE shall arrange for the review of all submittals it receives from the Settling Defendants. NJDEPE, in its sole discretion, may issue information requests to some or all of the persons whose identities it was provided with by the Settling Defendants. Based upon NJDEPE's resources, and, in its sole discretion, NJDEPE may, after fully reviewing the submittals of the Settling Defendants, issue a Directive and Notice To Insurers, pursuant to N.J.S.A. 58:10-23.11f(a)(1), to include those persons identified by the Settling Defendants. Nothing herein shall be construed to be a waiver of the Settling Defendants' responsibilities and obligations to comply with the terms and deadlines contained in this Consent Decree. It shall be solely within NJDEPE's discretion as to whether or not a Directive and Notice to Insurers should issue and, further, NJDEPE's exercise of its discretion shall not be subject to challenge by the Settling Defendants. Nor shall NJDEPE's decision not to name a person in any Directive and Notice to Insurers that should issue be construed as having any bearing upon the liability of any persons including, without limitation, the Settling Defendants.

NJDEPE may, as set forth below, authorize the Settling Defendants to collect treble damages pursuant to N.J.S.A. 58:10-23.11f(a)(3). If NJDEPE issues a Directive and Notice to Insurers, the Settling Defendants may, at the appropriate time, submit to NJDEPE a list of those persons who fail or refuse to comply with the Directive and Notice to Insurers

and request treble damages from the non-complying persons. NJDEPE may, in its sole discretion, authorize Settling Defendants to collect treble damages from additional persons who were named on the Directive and Notice to Insurers and who have failed or refused to comply with the Directive and Notice to Insurers. Settling Defendants acknowledge that the authority to collect treble damages against other persons they believe to be responsible for contaminating the Site is an inducement to Settling Defendants to enter into this Consent Decree, will expedite the remediation of the Site, and is in the public interest.