IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA and STATE OF OHIO, ex. rel. Michael DeWine, Ohio Attorney General Plaintiffs, v. RUTGERS ORGANICS CORPORATION Defendant.	CIVIL ACTION NO. 4:16-CV-2254 JUDGE BENITA Y. PEARSON

CONSENT DECREE

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I. BACKGROUND

1. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the Secretary of the United States Department of the Interior ("DOI"), and the State of Ohio, ex rel. Michael DeWine, Ohio Attorney General (the "State"), by and through the Attorney General of Ohio, on behalf of the Ohio Environmental Protection Agency ("Ohio EPA") (collectively the "Plaintiffs"):

a. Filed a complaint in this matter against Defendant Rutgers Organics Corporation ("Defendant" or "ROC") asserting claims under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607, and Section 311(f) of the Federal Water Pollution Control Act (commonly referred to as the "Clean Water Act" ("CWA")), 33 U.S.C. 1321(f); and

b. Seeks, *inter alia*: (i) reimbursement of costs incurred by EPA and Ohio EPA not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP") and the United States Department of Justice ("DOJ") in responding to the release and threat of release of hazardous substances by the Defendant at and from the Nease Chemical Superfund Site in Columbiana and Mahoning Counties, Ohio ("Site"), together with accrued interest; (ii) the performance of response actions by Defendant at the Site consistent with the NCP; and (iii) damages for injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, controlled by, or appertaining to the United States and the State, resulting from releases of hazardous substances in the Assessment Area, including the reasonable costs of assessing such injury, destruction, or loss.

2. The Complaint alleges that Defendant is responsible for reimbursement of response costs and for the performance of response actions arising from the release of hazardous substances at the Site because Defendant (or its predecessors) is an owner or operator of one or more facilities from which such releases have occurred or was an owner or operator of one or more such facilities at the time hazardous substances were disposed at such facilities.

3. The Complaint further alleges that Defendant is liable for damages for injury to, destruction of, or loss of natural resources arising from the release of hazardous substances because the Defendant (or its predecessors) is an owner or operator of one or more facilities from which such releases have occurred or was an owner or operator of one or more such facilities at the time hazardous substances were disposed at such facilities.

4. The Defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint, nor does it acknowledge that the release or threatened release of hazardous substances at or from the Site and/or in the Assessment Area constitutes an imminent and substantial endangerment to the public health or welfare or the environment, or that any of its actions resulted in injury to natural resources.

5. In accordance with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, and CERCLA Section 121(f)(1)(F), 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of negotiations with potentially responsible parties regarding the implementation of the 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.

6. In accordance with CERCLA Section 122(j)(1), 42 U.S.C. § 9622(j)(1), EPA notified the Department of the Interior and Ohio EPA ("Trustees") of negotiations with potentially responsible parties regarding the release of hazardous substances that may have

resulted in injury to natural resources under Federal trusteeship, and encouraged the Trustees to participate in the negotiation of this Consent Decree.

II. SITE HISTORY/EPA RESPONSE ACTIONS AND TRUSTEE ASSESSMENT

A. Site History

7. From 1961 through 1973, the Nease Chemical Company manufactured a variety of chemical substances at the Site. Such substances included, but were not limited to, household cleaning compounds, fire retardants, pesticides (including Mirex), and chemical intermediates used in agricultural, pharmaceutical, and other chemical intensive products. In 1973, Nease Chemical Company ceased operations at the Site. In 1977, the Ruetgers Chemical Company acquired the Nease Chemical Company and formed the Ruetgers-Nease Chemical Company. Ruetgers-Nease Chemical Company later changed its name to Rutgers Organics Corporation.

B. EPA Response Actions/Implementation of CERCLA Remedial Provisions

8. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List ("NPL"), 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.

9. In response to an alleged release or a substantial threat of a release of hazardous substances at or from the Site, ROC (at the time known as Ruetgers-Nease Chemical Company), Ohio EPA, and EPA signed an Administrative Order on Consent ("AOC") in January 1988 (effective February 26, 1988) requiring ROC to conduct a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

10. EPA has divided the Site into three Operable Units (OUs): OU 1 includes a long-term removal action to mitigate the further migration of contamination; OU 2 includes the Former Nease Property, the areal extent of soil contamination adjacent to the Former Nease Property, and the areal extent of groundwater contamination; and OU 3 includes Feeder Creek

and the contaminated stretch of the Middle Fork Little Beaver Creek ("MFLBC") and its floodplains.

11. ROC completed the Remedial Investigation Report, Nease Site, Salem, Ohio ("RI") for the Site in June 1996, the Feasibility Study for Operable Unit 2, Nease Chemical Company, Salem, Ohio ("OU 2 FS") in February 2005, and the Feasibility Study for Operable Unit 3, Nease Chemical Company, Salem, Ohio ("OU 3 FS") in June 2008. In addition, in 2004, ROC completed the Endangerment Assessment for the Nease Chemical Company Salem, Ohio Site ("EA"), which includes the human health and ecological risk assessments for the Site.

12. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the OU 2 FS and of the proposed plan for remedial action for OU 2 in May 2005, and EPA published notice of the completion of the OU 3 FS and of the proposed plan for remedial action for OU 3 in July 2008, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the OU 2 and OU 3 proposed plans for remedial action. On June 22, 2005, EPA held a public meeting on the OU 2 proposed plan at the Salem Public Library in Salem, Ohio. On July 31, 2008, EPA held a public meeting on the OU 3 proposed plan at the Salem Public Library in Salem, Ohio. A copy of the transcripts of the public meetings for the OU 2 and OU 3 proposed plans is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region 5 based the selection of the response action.

13. The decisions by EPA on the remedial actions to be implemented for OU 2 and OU 3 at the Site are embodied in a final Record of Decision ("ROD") for OU 2, executed on September 29, 2005 ("OU 2 ROD"), a final ROD for OU 3 executed on September 24, 2008 ("OU 3 ROD"), respectively, and an Explanation of Significant Differences ("ESD") for OU 2, issued on August 26, 2011 ("OU 2 ESD"), to all of which the State has given its concurrence.

The OU 2 ROD and OU 3 ROD each includes a responsiveness summary to the public comments. Notices of the RODs and the OU 2 ESD were published in accordance with Section 117(b) and (c) of CERCLA, 42 U.S.C. § 9617(b) and (c).

14. On May 10, 2006, EPA and ROC entered into an AOC requiring ROC to conduct the Remedial Design ("RD") for OU 2 ("OU 2 RD AOC"), and on June 30, 2009, EPA and ROC entered into an AOC requiring ROC to conduct the RD for OU 3 ("OU 3 RD AOC"). These AOCs were entered under authority of Sections 104, 106, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, 9607, and 9622.

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

16. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth by the OU 2 ROD, OU 3 ROD, and the OU 2 ESD, and the Remedial Work to be performed by the Settling Defendant shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

C. <u>Trustee Assessment/Regulatory Framework</u>

17. The Trustees have determined that the natural resources affected or potentially affected by the release of the hazardous substances in the Assessment Area include: (1) floodplain soils, sediments, surface and ground water, and biological resources, such as aquatic/wetland and terrestrial plants; (2) benthic, aquatic, and terrestrial invertebrates; (3) fish; (4) migratory birds, including but not limited to waterfowl, and their supporting habitats; and (5) mammals.

18. The Trustees have determined that the primary pathways of hazardous substances to natural resources in the Assessment Area are: (1) migratory birds feeding at and near the

Assessment Area, through direct contact with contaminants in surface water and soils, and through their food chains; (2) fish and fish-eating birds in the MFLBC, through direct contact with contaminated sediments and through their food chains; (3) benthic organisms, which are important elements of the food chains supporting fish, fish-eating birds, and fish-eating mammals, through contact with contaminated surface water and sediments in Feeder Creek and contaminated sediments in the MFLBC; and (4) loss of ground water uses as the result of contamination.

19. DOI's Natural Resource Damage Assessment (NRDA) regulations state that injury to biological trust resources occurs when a hazardous substance: (1) causes the resource or its offspring to undergo an adverse change in viability; (2) exceeds action or tolerance levels established under Section 402 of the Food, Drug and Cosmetic Act , 21 U.S.C. § 342, in edible portions of organisms; or (3) exceeds levels for which a state health agency has issued an advisory limiting or banning consumption of such biological resource. 43 C.F.R. § 11.62(f). Injury to ground water trust resources occurs when a hazardous substance exceeds drinking water standards in water that was potable before the discharge or release. 43 C.F.R. § 11.62(c). Injury to surface water trust resources occurs when a hazardous substance exceeds water quality criteria established by Section 304(a)(1) of the CWA or by other federal and State laws or regulations that establish such criteria. 43 C.F.R. § 11.62(b).

20. In 1987, the Ohio Department of Health (ODH) issued a "do not eat fish" consumption advisory for all fish, based on Mirex contamination, for the MFLBC; the advisory was modified in 2003 and 2007 based on additional fish fillet data. Fish consumption advisories in 2007 included other contaminants, such as mercury and PCBs that are unrelated to the Site; however, Mirex was still detected in MFLBC above unrestricted consumption levels. In 1988, ODH issued a contact advisory warning against wading and swimming in the MFLBC. The

advisory was in place until February 2011, when it was rescinded after an additional evaluation was performed. Hazardous substances above the CWA and Ohio Water Quality standards have been detected in Feeder Creek. Releases of volatile organic compounds have contaminated ground water above drinking water standards, including the maximum contaminant levels.

21. CERCLA and CWA authorize trustees to act on behalf of the public to recover damages for injuries to, destruction of, or loss of natural resources resulting from the release of hazardous substances to the environment, and the reasonable cost of assessing such damages. 42 U.S.C. § 9607 and 33 U.S.C. § 1321(f). Trustees may recover damages for the costs of performing an assessment and for injuries to natural resources and their services from the time of the hazardous substance release, through the recovery period, until full restoration is achieved, or, if full restoration is not possible, for future losses, plus any increase in injuries that are a result of the response actions. 42 U.S.C. § 9607 and 43 C.F.R. § 11.15(a). Compensation (i.e., damages), at a minimum, must include the cost of restoring the injured natural resources and their provided services back to baseline. 43 C.F.R. § 11.80(b).

22. Trustees may also recover damages for the loss in services provided by the injured resources between the time of the release and the time the resources and the services those resources provided are fully returned to their baseline conditions. 43 C.F.R. § 11.83(c). Compensable value includes the value of lost public use of the services provided by the injured resources, plus lost nonuse values, such as existence and bequest values. *Id*.

23. Plaintiffs allege that, at the Assessment Area, the Trustees investigated potential injuries from the release of hazardous substances (including but not limited to Mirex, chlordecone (kepone), hexachlorocyclopentadiene, chlorinated ethenes, and chlorinated benzenes) and assessed potential restoration efforts. Mirex contamination has been detected in Feeder Creek and in approximately 36 river miles of the MFLBC. The contaminated ground

water plume at the Site renders a portion of the aquifers unusable as a source of potable water.

24. In accordance with CERCLA and its implementing regulations, the Trustees prepared a Draft Natural Resource Restoration Plan and Environmental Assessment ("Draft Restoration Plan"), dated March 5, 2015, that was subject to public notice and comment. The purpose of the Draft Restoration Plan was to inform the public about the affected environment and the restoration projects proposed to compensate for injuries identified by the Trustees caused by the releases to the natural resources and their services. The Trustees received comments on the Draft Restoration Plan. Public comments were considered and the Restoration Plan was finalized. A copy of the Final Restoration Plan is attached hereto and is incorporated herein by reference as Appendix D. Pursuant to this Consent Decree, Settling Defendant will implement the Restoration Projects described in Section X and Appendices D and H to this Consent Decree, which Projects have been determined by the Trustees to provide for the restoration or replacement of equivalent natural resources that were allegedly injured, destroyed, or lost as a result of the releases.

25. The United States, the State and the Settling Defendant (collectively, the "Parties" to this Consent Decree) recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that implementation of this Consent Decree will avoid prolonged and complicated litigation among the Parties, and that this Consent Decree is fair, reasonable, consistent with applicable law, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, except as provided in Section III, and with the consent of the Parties, it is hereby Ordered, Adjudged, and Decreed:

III. JURISDICTION

26. 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 Defendant. Venue lies in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391(b) and (e), because the releases and injuries alleged in the Complaint occurred within this district, and a substantial part of the events giving rise to Plaintiffs' claims occurred in this district. For the purposes of this Consent Decree, or any action to enforce this Decree, Settling Defendant consents to this Court's jurisdiction over this Decree and any such action and over Settling Defendant as well as to venue in this district.

IV. PARTIES BOUND

27. This Consent Decree applies to and is binding upon the United States, the State, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate status of 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.

28. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing 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 Defendant or its 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 Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of 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 Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

V. DEFINITIONS

29. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA, the NCP, or the DOI NRDA Regulations, 43 C.F.R. Part 11, shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

"Assessment Area" shall mean the Former Nease Property, portions of the Former Crane-Deming Property, the underlying groundwater aquifers, Feeder Creek, portions of MFLBC, and supporting ecosystems, where the Trustees have determined that certain natural resources have been affected directly or indirectly by the release of hazardous substances from the former Nease Chemical facility. The Assessment Area serves as the geographic basis for the injury assessment, and is depicted on the map of the Assessment Area included in Appendix F.

"Assessment Costs" shall mean the reasonable direct and indirect costs incurred or to be incurred by the Trustees, as defined in 43 C.F.R. §11.15(a)(3), in assessing the natural resources the Trustees allege were injured, destroyed, or lost at or in connection with releases at or from the Former Nease Property, in identifying and planning Restoration Projects to compensate for such injuries and loss, and in the monitoring of the Restoration Projects contemplated by this Consent Decree. Such costs shall include reasonable administrative costs and other costs or expenses recoverable under 43 C.F.R. § 11.15(a)(3) which are incurred to provide for, carry out, or support the activities or responsibilities of the Trustees consistent with this Consent Decree, including their attorneys, in overseeing the implementation of the Restoration Projects. Past

Assessment Costs shall mean those Assessment Costs incurred as of March 18, 2016. Future Assessment Costs shall mean those Assessment Costs incurred after March 18, 2016.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

"Conservation Easement" shall mean a "Conservation Easement" as defined in Ohio Revised Code § 5301.67(A) that complies with Ohio Revised Code §§ 5301.68 – 5301.70.

"Conservation Trust" shall mean the trust established by ROC, as Grantor, and a Land Conservation Organization selected by Grantor, as Trust Grantee, whereby Grantor shall fund and Trust Grantee shall complete the conservation of Conserved Lands as required by this Consent Decree.

"Conserve" shall mean to preserve or protect natural resources pursuant to this Consent Decree through the use of Conservation Instruments as defined in Paragraph 76(a).

"Conserved Lands" shall mean those parcels of land that Settling Defendant is required to conserve in accordance with Section X, Performance of Restoration Projects, and includes "Priority Properties" and/or "Alternate Properties" as described in Section X, Subpart D.

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

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

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

"Effective Date" shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

"Environmental Covenant" shall mean an "Environmental Covenant" as defined in Ohio Revised Code § 5301.80(D) that complies with Ohio Revised Code §§ 5301.80 - 5301.92.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Feeder Creek" shall mean the small tributary to the Middle Fork of Little Beaver Creek that drains the Former Nease Property and Former Crane-Deming Property.

"Final OU 2 Remedial Design" or "Final OU 2 RD" shall mean the final plans and specifications for the OU 2 Remedial Action approved or modified by EPA pursuant to Section VII (Performance of the Remedial Design/Remedial Action) and Section XIV (Approval of Plans, Reports, and Other Deliverables) of this Consent Decree and the Remedial Statement of Work ("SOW").

"Final OU 3 Remedial Design" or "Final OU3 RD" shall mean the final plans and specifications of the OU 3 Remedial Action approved or modified by EPA pursuant to Section VII (Performance of the Remedial Design/Remedial Action) and Section XIV (Approval of Plans, Reports, and Other Deliverables) of this Consent Decree and the Remedial SOW.

"Former Crane-Deming Property" shall mean the facility and surrounding property adjacent to and east of the Former Nease Property, consisting of approximately 35 acres, which includes an existing manufacturing facility. ROC acquired the property from the Crane-Deming Company in late 1997, but continued to lease the property to the Crane-Deming Company. Until mid-2005, the Crane-Deming Company operated a pump manufacturing business within the building on the property. In 2006, ROC sold part of the former Crane-Deming property to the Columbiana County Port Authority, which in turn, leased the building and parking lot on the property to MAC Trailer Realty, Inc. MAC Trailer Realty, Inc., now owns part of the Former Crane-Deming Property, and conducts manufacturing on the property.

"Former Nease Property" shall mean the facility and surrounding property in Columbiana, Ohio that was owned and operated from 1961 until 1973 by the Nease Chemical Company as a chemical manufacturing plant producing specialty chemicals such as pesticides (including Mirex), fire retardants, household cleaning compounds and chemical intermediates used in agricultural, pharmaceutical, and other chemical products. The Former Nease Property lies adjacent to and west of the Former Crane-Deming Property, and includes former settling ponds once used by the Nease Chemical Company.

"Future Response Costs" shall mean all costs not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the United States and/or State incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, in overseeing implementation of the Remedial Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Subsection VI.D (Notice to Successors-in-Title and Transfers of Real Property) in Section VI (Statement of Purpose/General Provisions Section), Sections VIII (Remedy Review), XI (Remedial Access and Institutional Controls)

(including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain or enforce Institutional Controls including the amount of just compensation), XVIII (Emergency Response), Paragraph 112 (Access to Financial Assurance), and Section XXXV (Community Involvement). Future Response Costs shall also include all Interim Response Costs. Future Response costs shall not include those costs incurred by the United States that Settling Defendant has paid in accordance with the OU 2 RD AOC or OU 3 RD AOC, or those costs incurred by the State that the Settling Defendant has paid in accordance with Ohio EPA's Final Findings and Orders for Cost Recovery dated October 26, 2006 for OU 2 and March 2, 2010 for OU 3, or the Ohio EPA's Administrative Findings and Orders for Cost Recovery entered into pursuant to Paragraph 131(e) of this Consent Decree.

"FWS" shall mean the U.S. Fish and Wildlife Service of the United States Department of the Interior, and its successor departments, agencies, or instrumentalities.

"Institutional Controls" or "ICs" shall mean Remedial Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

"Institutional Control Implementation and Assurance Plan" or "ICIAP" shall mean the plan for implementing, maintaining, monitoring, and reporting on the Institutional Controls set forth in the OU 2 ROD and OU 2 ESD, prepared in accordance with the Remedial SOW.

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on

October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs not inconsistent with the NCP (a) paid by the EPA and/or State in connection with the Site between March 18, 2016 and the Effective Date; (b) paid by the Department of Justice in connection with the Site between March 18, 2016 and the Effective Date; or (c) incurred prior to the Effective Date but paid after that date.

"Lodging Date" means the date on which this Consent Decree is lodged with the Court.

"MFLBC" shall mean Middle Fork of Little Beaver Creek.

"Natural Resources" shall mean land, wildlife, biota, air, surface water, ground water drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States and/or the State.

"Natural Resource Damages" shall mean compensation for injury to, destruction of, or loss of, Natural Resources resulting from or relating to releases of hazardous substances in, or which have migrated into, the Assessment Area, as set forth in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C). Natural Resource Damages includes Assessment Costs incurred by the Trustees in assessing such injury, destruction, or loss arising from or relating to such releases, and each of the categories of damages described in 43 C.F.R. § 11.15.

"Nease Chemical Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"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. § 300, and any amendments thereto.

"NRDAR Fund" shall mean DOI's Natural Resource Damage Assessment and Restoration Fund, established pursuant to 43 U.S.C. § 1474b and 1474b-1.

"NZVI" shall mean nanoscale zero-valent iron, as described in the OU 2 ROD.

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

"OU 2" shall mean Operable Unit 2 of the Site as specified by the OU 2 ROD.

"OU 2 Explanation of Significant Differences" or "OU 2 ESD" shall mean the EPA Explanation of Significant Differences signed by Richard Karl, Director Superfund Division, EPA Region 5, on August 26, 2011, that alters the remedy selected in the OU 2 ROD and is included as Appendix C.

"OU 2 Remedial Action" shall mean all activities the Settling Defendant is required to perform under this Consent Decree to implement the OU 2 ROD and OU 2 ESD in accordance with the Remedial SOW, the Final OU 2 Remedial Design, the OU 2 Remedial Action Work Plan, and other plans approved by EPA, including Pre-Achievement O&M and implementation of Institutional Controls, until the Performance Standards for OU 2 are met, and excluding performance of the Remedial Design, Post-Achievement O&M and the activities required under Section XXX (Retention of Records) of this Consent Decree.

"OU 2 Remedial Action Work Plan" shall mean the document developed pursuant to Section VII (Performance of the Remedial Design/Remedial Action) of this Consent Decree and the Remedial SOW and approved by EPA, and any modifications thereto.

"OU 2 Remedial Design" or "OU 2 RD" shall mean those activities to be undertaken by Settling Defendant to develop the final plans and specifications for the OU 2 Remedial Action

pursuant to the OU 2 Remedial Design AOC, Section VII (Performance of the Remedial Design/Remedial Action) of this Consent Decree, and the Remedial SOW.

"OU 2 Remedial Design AOC" or "OU 2 RD AOC" shall mean the Administrative Settlement Agreement and Order on Consent for Remedial Design entered into by EPA and ROC on May 10, 2006, which requires ROC to undertake remedial design activities to develop the final plans and specifications for the Remedial Action for OU 2.

"OU 2 Remedial Operation & Maintenance Plan" or "OU 2 Remedial O&M Plan" shall mean the document developed pursuant to Section VII (Performance of the Remedial Design/Remedial Action) of this Consent Decree and the Remedial SOW and approved by EPA, and any modifications thereto.

"OU 2 ROD" shall mean the EPA Record of Decision relating to OU 2 of the Site, and all attachments thereto that the Director, Superfund Division, EPA Region 5, or his/her delegate, signed on September 29, 2005. The OU 2 ROD is attached as Appendix A.

"OU 3" shall mean Operable Unit 3 of the Site as specified by the OU 3 ROD.

"OU 3 Remedial Action" shall mean all activities the Settling Defendant is required to perform under the Consent Decree to implement the OU 3 ROD in accordance with the Remedial SOW, the Final OU 3 Remedial Design, the OU 3 Remedial Action Work Plan, and other plans approved by EPA, including Pre-Achievement O&M and implementation of Institutional Controls, until the Performance Standards are met, and excluding performance of the Remedial Design, Post-Achievement O&M and the activities required under Section XXX (Retention of Records) of this Consent Decree.

"OU 3 Remedial Action Work Plan" shall mean the document developed pursuant to Section VII (Performance of the Remedial Design/Remedial Action) of this Consent Decree and the Remedial SOW and approved by EPA, and any modifications thereto.

"OU 3 Remedial Design" or "OU 3 RD" shall mean those activities to be undertaken by Settling Defendant to develop the final plans and specifications for the OU 3 Remedial Action pursuant to the OU 3 RD AOC, Section VII (Performance of the Remedial Design/Remedial Action) of this Consent Decree, and the Remedial SOW.

"OU 3 Remedial Design AOC" or "OU 3 RD AOC" shall mean the Administrative Settlement Agreement and Order on Consent for Remedial Design entered into by EPA and ROC on June 30, 2009, which requires ROC to undertake remedial design activities to develop the final plans and specifications for the Remedial Action for OU 3.

"OU 3 Remedial Operation & Maintenance Plan" or "OU 3 Remedial O&M Plan" shall mean the document developed pursuant to Section VII (Performance of the Remedial Design/Remedial Action) of this Consent Decree and the Remedial SOW and approved by EPA, and any modifications thereto.

"OU 3 ROD" shall mean the EPA Record of Decision relating to OU 3 of the Site, and all attachments thereto that the Director, Superfund Division, EPA Region 5, or his/her delegate, signed on September 24, 2008. The OU 3 ROD is attached at Appendix B.

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

"Parties" shall mean the United States, the State and the Settling Defendant.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs not inconsistent with the NCP that the EPA and/or State paid at or in connection with the Site through March 18, 2016, and that the Department of Justice paid through March 18, 2016. Past Response Costs do not include costs that have been specifically billed to and paid fully by Settling Defendant under previous administrative settlement agreements.

"Performance Standards" shall mean the cleanup standards and other measures of

achievement of the goals of the Remedial Action, set forth in the OU 2 ROD, OU 3 ROD, the OU 2 ESD, the Remedial SOW, the Final OU 2 Remedial Design, and the Final OU 3 Remedial Design, the OU 2 Remedial Action Work Plan, the OU 3 Remedial Action Work Plan, and any modified standards established pursuant to this Consent Decree.

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

"Pre-Achievement O&M" shall mean all operation and maintenance activities required for the Remedial Action to achieve Performance Standards, as provided under the Remedial Operation and Maintenance Plan approved or developed by EPA pursuant to Section VII (Performance of the Remedial Design/Remedial Action) and Section XIV (Approval of Plans, Reports, and Other Deliverables) of this Consent Decree and the Remedial SOW, and maintenance, monitoring, and enforcement of Institutional Controls as provided in the ICIAP, until Performance Standards are met.

"Post-Achievement O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action after Performance Standards are met, as required under the Remedial Operation and Maintenance Plan approved or developed by EPA pursuant to Section VII (Performance of the Remedial Design/Remedial Action) and Section XIV (Approval of Plans, Reports, and Other Deliverables) of this Consent Decree and the Remedial SOW, and maintenance, monitoring, and enforcement of Institutional Controls after Performance Standards are met, as provided in the ICIAP.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901- 6992 (also known as the Resource Conservation and Recovery Act).

"Remedial Action" shall mean all activities the Settling Defendant is required to perform under this Consent Decree to implement the OU 2 ROD, OU 3 ROD, and OU 2 ESD in accordance with the Remedial SOW, the Final OU 2 Remedial Design, the Final OU 3 Remedial

Design, the OU 2 Remedial Action Work Plan, the OU 3 Remedial Action Work Plan, and other plans approved by EPA, including Pre-Achievement O&M and implementation of Institutional Controls, until the Performance Standards are met, and excluding performance of the Remedial Design, Post-Achievement O&M and the activities required under Section XXX (Retention of Records) of this Consent Decree. With respect to Section VIII (Remedy Review) of this Consent Decree, "Remedial Action" shall mean as that term is defined under Section 101(24) of CERCLA, 42 U.S.C. § 9601(24).

"Remedial Design" or "RD" shall mean those activities to be undertaken by Settling Defendant to develop the final plans and specifications for the Remedial Action pursuant to the OU 2 RD AOC, OU 3 RD AOC, Section VII (Performance of the Remedial Design/Remedial Action) of this Consent Decree and the Remedial SOW.

"Remedial Operation and Maintenance" or "Remedial O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the OU 2 or OU 3 Remedial O&M Plan approved or developed by EPA pursuant to Section VII (Performance of the Remedial Design/Remedial Action) of this Consent Decree and the Remedial SOW.

"Remedial Proprietary Controls" shall mean easements or Institutional Controls running with the land that (a) limit land, water or resource use and/or provide access rights and (b) are created pursuant to common law or Ohio statutory law by an instrument that is recorded by the owner in the appropriate land records office. Notwithstanding the foregoing, Remedial Proprietary Controls do not include a Conservation Easement or Environmental Covenant established as part of the Restoration Work under this Consent Decree**.**

"Remedial Statement of Work" or "Remedial SOW" shall mean the statement of work for implementation of the Remedial Design, the Remedial Action, and Remedial O&M at the Site, attached as Appendix E to this Consent Decree, and any modifications made in accordance

with this Consent Decree.

"Remedial Work" shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree pertaining to implementation and maintenance of EPA's selected remedy for the Site.

"ROC" shall mean Rutgers Organics Corporation, a corporation organized and existing under the laws of the State of Pennsylvania.

"Restoration Completion Report" shall mean a final report submitted to the Trustees at the completion of the construction/implementation of each of the restoration projects. Restoration Completion Report shall include the components outlined in the Restoration SOW (Appendix H) and detailed in the Trustee-approved Restoration Work Plan.

"Restoration Plan" shall mean the Natural Resource Restoration Plan & Environmental Assessment for the Nease Chemical Facility, attached as Appendix D.

"Restoration Projects" shall mean those restoration projects described in Section X of this Consent Decree and in the Restoration SOW attached as Appendix H.

"Restoration Properties" shall mean the real property described in Section X of this Consent Decree and in the Restoration SOW attached as Appendix H.

"Restoration Statement of Work" or "Restoration SOW" shall mean the statement of work for Restoration Projects, attached as Appendix H to this Consent Decree.

"Restoration Work" shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree pertaining to construction/implementation of the Restoration Projects.

"Restoration Work Plan" shall mean a work plan providing detailed descriptions of activities proposed to be undertaken on the Restoration Properties consistent with the Restoration Plan and Restoration SOW to restore, replace or acquire the equivalent of natural resources that

the Trustees allege are injured as a result of releases of hazardous substances into or within the Assessment Area, together with proposed schedules for implementation of such activities.

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

"Settling Defendant" shall mean ROC.

"Site" shall mean the Nease Chemical Superfund Site, located in Columbiana and Mahoning Counties, Ohio, which is depicted generally on the maps attached at Appendix F. The Site includes the Former Nease Property, portions of the Former Crane-Deming Property, areas where groundwater is contaminated, and areas affected by soil gas emanating from contaminated groundwater (comprising OU 2); Feeder Creek and portions of the MFLBC and floodplains (comprising OU 3); and nearby areas necessary for the implementation of the response actions.

"S/S/S" shall mean soil mixing/stripping, stabilization and solidification, as described in the OU 2 ROD.

"State" or "State of Ohio" shall mean the State of Ohio, on behalf of Ohio EPA.

"Supervising Contractor" shall mean the principal contractor(s) retained by the Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"Trustees" shall mean DOI and the State through Ohio EPA.

"United States" shall mean the United States of America and each department, agency and instrumentality of the United States, including EPA and DOI.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of

CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations Settling Defendant is required to perform under this Consent Decree pertaining to implementation and maintenance of EPA's selected remedy and the performance of all Restoration Projects. The activities required under Section XXX (Retention of Records) shall not be considered Work.

VI. STATEMENT OF PURPOSE/GENERAL PROVISIONS

A. Objectives of the Parties

30. The mutual objectives of the Parties in entering into this Consent Decree are:

a. 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 Defendant, to pay response costs of the United States not inconsistent with the NCP, and to resolve the response action claims of the United States and the State against Settling Defendant as provided in this Consent Decree;

b. To provide for the restoration of Natural Resources allegedly injured, destroyed, or lost as a result of releases of hazardous substances from or at the Site through implementation of the Restoration Projects described in Section X of this Consent Decree and in Appendix H;

c. To reimburse recoverable Assessment Costs and certain other costs consistent with this Consent Decree incurred by the Trustees, as provided herein;

d. To resolve potential liability of the Settling Defendant with respect to Natural Resource Damages as provided herein; and

e. To avoid costly and time-consuming litigation.

B. Commitments by Settling Defendant

31. As set forth more fully in Section VII hereof, Settling Defendant shall finance and perform the Remedial Work in accordance with the OU 2 ROD, the OU 3 ROD, the OU 2 ESD, the Final OU 2 Remedial Design, the Final OU 3 Remedial Design, the Remedial SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Defendant and approved by EPA pursuant to this Consent Decree. Settling Defendant shall also pay the United States for Past and Future Response Costs as provided in Section XIX (Payment of Response Costs) of this Consent Decree. Pursuant to Paragraph 131(d) below, the State's claim for reimbursement of Past and Future Response costs is being resolved through the State's administrative orders for the Site, known as the Director's Final Findings and Orders ("DFFOs") for Cost Recovery, entered into between the State and ROC on August 4, 2016.

32. As set forth more fully in Section X (Performance of Restoration Projects), Settling Defendant shall finance and perform the Restoration Projects consistent with the goal of the Restoration Plan and in accordance with the Restoration Work Plan(s), the Alternate Properties Screening Criteria, the Restoration SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Defendant and approved by the Trustees pursuant to this Consent Decree. Settling Defendant shall also pay the recoverable past and future Assessment Costs as provided in Section XX (Payment for Assessment Costs) of this Consent Decree.

33. All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the OU 2 ROD, OU 3 ROD, the OU 2 ESD and the Remedial SOW. The activities conducted by Settling

Defendant pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

C. Permits

34. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Remedial Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Remedial Work). Where any portion of the Remedial Work that is not on-Site requires a federal or state permit or approval, Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

D. Notice to Successors-in-Title and Transfers of Real Property

36. For any real property owned or controlled by Settling Defendant located at the Site, Settling Defendant shall, within 30 days after the Effective Date, submit to EPA for review and approval a proposed notice to be filed with the land records office that provides a description of the real property and provides notice to all successors-in-title that the real property is part of the Site, that EPA has selected a remedy for the Site, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. The notice also shall describe the land use restrictions, if any, set forth in Section XI (Remedial Access and Institutional Controls) and shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Settling Defendant shall record the notice within ten days of EPA's approval of the notice. Settling Defendant shall provide EPA with a certified copy of the

recorded notice within ten days of recording such notice.

37. Settling Defendant shall, at least 60 days prior to any Transfer of real property located at the Site owned by Settling Defendant, give written notice: (1) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property; and (2) to EPA and the State regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree and any Institutional Controls.

38. Settling Defendant may Transfer any real property located at the Site only if: (1) any Remedial Proprietary Controls required by Section XI (Remedial Access and Institutional Controls) have been recorded with respect to the real property; or (2) Settling Defendant has obtained an agreement from the transferee, enforceable by the Settling Defendant and the United States, to (a) allow access and restrict land/water use, pursuant to Paragraph 81.a(i) and (ii); (b) record any Remedial Proprietary Controls on the real property, pursuant to Paragraph 81.a(iii); and (c) subordinate its rights to any such Remedial Proprietary Controls, pursuant to Paragraph 81.a(iii), and EPA has approved in writing the agreement pursuant to Paragraph 81.b. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in Paragraph 81.a, Settling Defendant shall take all reasonable steps to obtain the transferee's compliance with such agreement. At the request of Settling Defendant, the United States may seek the transferee's compliance with the agreement and/or assist Settling Defendant in obtaining compliance with the agreement. Settling Defendant shall reimburse the United States under Section XIX (Payment of Response Costs) for all costs incurred, direct and indirect, by the United States in assisting Settling Defendant under the preceding sentence, including, but not limited to, the cost of attorney time.

39. In the event of any Transfer by Settling Defendant of real property located at the

Site, unless the United States otherwise consents in writing, Settling Defendant shall continue to comply with its obligations under the Consent Decree to provide and/or secure access; implement, maintain, monitor, and report on Institutional Controls; and abide by such Institutional Controls.

VII. PERFORMANCE OF THE REMEDIAL DESIGN/REMEDIAL ACTION

40. Selection of Supervising Contractor. All aspects of the Remedial Work to be performed by Settling Defendant pursuant to this Section, Sections VIII (Remedy Review), IX (Remedial Quality Assurance, Sampling and Data Analysis), XI (Remedial Access and Institutional Controls), and XVIII (Emergency Response) shall be under the direction and supervision of the Supervising Contractor. Settling Defendant has selected and, after reasonable opportunity for review and comment by the State, EPA has issued an authorization to proceed regarding hiring of the following person and/or firm as Supervising Contractor: Golder Associates Inc., 200 Century Parkway, Suite C, Mt. Laurel, New Jersey USA 08054. If at any time hereafter Settling Defendant proposes to change this Supervising Contractor, Settling Defendant shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Remedial Work under this Consent Decree. Settling Defendant shall demonstrate that the proposed replacement contractor has a quality assurance system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA.

EPA will issue a notice of disapproval or an authorization to proceed regarding hiring of the proposed replacement contractor.

41. If EPA disapproves a proposed replacement Supervising Contractor, EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA and the State a list of contractors, including the qualifications of each contractor that would be acceptable to it within 30 days after receipt of EPA's disapproval of the contractor previously proposed. 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 Defendant 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.

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

43. OU 2 Remedial Design.

a. Settling Defendant shall complete a Final OU 2 Remedial Design in accordance with the Remedial SOW and all EPA-approved deliverables required by or specified under the Remedial SOW. Settling Defendant shall submit to EPA and the State for review and approval pursuant to Section XIV (Approval of Plans, Reports, and Other Deliverables) all plans, reports, and other deliverables required under the Remedial SOW for OU 2 Remedial Design, in accordance with the schedule provided in the Remedial SOW.

b. As of the Effective Date of this Consent Decree, the OU 2 Remedial Design shall be subject to this Consent Decree in lieu of the OU 2 RD AOC**,** and EPA shall

submit to Settling Defendant a notice terminating the OU2 RD AOC as of the Effective Date. Settling Defendant shall maintain the financial security it established pursuant to Paragraph 100 of the OU 2 RD AOC until it has established the performance guarantee required pursuant to Paragraph 109 of this Consent Decree.

44. OU 2 Remedial Action

a. Within 60 days after EPA's approval or modification of the Final OU 2 Remedial Design, Settling Defendant shall submit to EPA and the State a work plan for the performance of the Remedial Action for OU 2 at the Site ("OU 2 Remedial Action Work Plan"). The OU 2 Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the OU 2 ROD and the OU 2 ESD and achievement of the Performance Standards, in accordance with this Consent Decree, the OU 2 ROD, the OU 2 ESD, the Remedial SOW, and the design plans and specifications of the Final OU 2 RD. The OU 2 Remedial Action Work Plan shall include all the elements required under the Remedial SOW. Upon its approval or modification by EPA in accordance with the Approval of Plans, Reports and Other Deliverables section of this Consent Decree, the OU 2 Remedial Action Work Plan shall be incorporated into and enforceable under this Consent Decree.

b. At the same time as it submits the OU 2 Remedial Action Work Plan pursuant to subparagraph 44a. of this Consent Decree, Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field activities required by the OU 2 Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements

including, but not limited to, 29 C.F.R. § 1910.120.

c. Upon approval or modification of the OU 2 Remedial Action Work Plan by EPA in accordance with Section XIV (Approval of Plans, Reports, and Other Deliverables) of this Consent Decree, Settling Defendant shall implement the activities required under the OU 2 Remedial Action Work Plan. Settling Defendant shall submit to EPA and the State all reports and other deliverables required under the approved OU 2 Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (Approval of Plans, Reports and Other Deliverables). Unless otherwise directed by EPA, Settling Defendant shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

d. The OU 2 Remedial Action Work Plan shall include a schedule for review and approval of the OU 2 Remedial O&M Plan, and Settling Defendant shall prepare and submit the OU 2 Remedial O&M Plan in accordance with the approved schedule under the OU 2 Remedial Action Work Plan. The OU 2 Remedial O&M Plan shall provide for all the activities required to maintain the effectiveness of the Remedial Action for OU 2, in accordance with this Consent Decree, the OU 2 ROD, the OU 2 ESD, the Remedial SOW, and the design plans and specifications of the Final OU 2 RD. The OU 2 Remedial O&M Plan shall include all of the elements required under the Remedial SOW. Upon its approval or modification by EPA in accordance with Section XIV (Approval of Plans, Reports and Other Deliverables), the OU 2 Remedial O&M Work Plan shall be incorporated into and enforceable under this Consent Decree.

45. <u>OU 3 Remedial Design</u>.

a. Settling Defendant shall complete a Final OU 3 Remedial Design in accordance with the Remedial SOW and all EPA-approved deliverables required by or specified under the Remedial SOW. Settling Defendant shall submit to EPA and the State for review and approval pursuant to Section XIV (Approval of Plans, Reports, and Other Deliverables), all plans, reports, and other deliverables required under the Remedial SOW for OU 3 Remedial Design, in accordance with the schedule provided in the Remedial SOW.

b. As of the Effective Date of this Consent Decree, the OU 3 Remedial Design shall be subject to this Consent Decree in lieu of the OU 3 RD AOC**,** and EPA shall submit to Settling Defendant a notice terminating the OU3 RD AOC as of the Effective Date. Settling Defendant shall maintain the financial security it established pursuant to Paragraph 100 of the OU 3 RD AOC until it has established the performance guarantee required pursuant to Paragraph 109 of this Consent Decree.

46. OU 3 Remedial Action.

a. Within 60 days after EPA's approval or modification of the Final OU 3 Remedial Design, Settling Defendant shall submit to EPA and the State a work plan for the performance of the Remedial Action for OU 3 at the Site ("OU 3 Remedial Action Work Plan"). The OU 3 Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the OU 3 ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the OU 3 ROD, the Remedial SOW, and the design plans and specifications developed in accordance with the Final OU 3 Remedial Design. The OU 3 Remedial Action Work Plan shall include all of the elements required

under the Remedial SOW and shall be integrated with the OU 2 Remedial Action Work Plan as appropriate. Upon its approval or modification by EPA in accordance with Section XIV (Approval of Plans, Reports, and Other Deliverables), the OU 3 Remedial Action Work Plan shall be incorporated into and enforceable under this Consent Decree.

b. At the same time as it submits the OU 3 Remedial Action Work Plan pursuant to subparagraph a., Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field activities required by the OU 3 Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

c. Upon approval or modification of the OU 3 Remedial Action Work Plan by EPA in accordance with Section XIV (Approval of Plans, Reports, and Other Deliverables), Settling Defendant shall implement the activities required under the OU 3 Remedial Action Work Plan. Settling Defendant shall submit to EPA and the State all reports and other deliverables required under the approved OU 3 Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (Approval of Plans, Reports, and Other Deliverables). Unless otherwise directed by EPA, Settling Defendant shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

d. The OU 3 Remedial Action Work Plan shall include a schedule for review and approval of an OU 3 Remedial O&M Plan, and Settling Defendant shall prepare and submit the OU 3 Remedial O&M Plan in accordance with the approved

schedule under the OU 3 Remedial Action Work Plan. The OU 3 Remedial O&M Plan shall provide for all the activities required to maintain the effectiveness of the Remedial Action for OU 3, in accordance with this Consent Decree, the OU 3 ROD, the Remedial SOW, and the design plans and specifications of the Final OU 3 RD. The OU 3 Remedial O&M Plan shall include all of the elements required under the Remedial SOW and shall be integrated with the OU 2 Remedial O&M Plan as appropriate. Upon its approval or modification by EPA in accordance with Section XIV (Approval of Plans, Reports and Other Deliverables), the OU 3 Remedial O&M Work Plan shall be incorporated into and enforceable under this Consent Decree.

47. Settling Defendant shall continue to implement the Remedial Action and Remedial O&M until the Performance Standards are achieved. Settling Defendant shall implement Remedial O&M for so long thereafter as is required by this Consent Decree.

48. Institutional Control Implementation and Assurance Plan. Within 30 days after EPA's approval or modification of the Final OU 2 Remedial Design**,** Settling Defendant shall submit for approval an ICIAP to implement the Institutional Controls set forth in the OU 2 ROD, OU 2 ESD, and this Consent Decree, in accordance with the Remedial SOW. Upon approval or modification by EPA pursuant to Section XIV (Approval of Plans, Reports, and Other Deliverables), the ICIAP shall be incorporated into and enforceable under this Consent Decree.

49. Modification of Remedial SOW or Related Work Plans. If EPA determines that it is necessary to modify the Remedial Work specified in the Remedial SOW and/or in work plans developed pursuant to the Remedial SOW to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the OU 2 ROD, OU 3 ROD, and OU 2 ESD, and such modification is consistent with applicable sections of the NCP and the

scope of the remedy set forth in the OU 2 ROD, OU 3 ROD, and OU 2 ESD, then EPA may issue such modification in writing and shall notify Settling Defendant of such modification. For the purposes of this Paragraph and Sections XVII.B (Completion of the Remedial Action) and XVII.C (Completion of the Remedial Work) only, the scope of the remedy set forth in the OU 2 ROD, OU 3 ROD, and OU 2 ESD is as set forth in Sections 9.2 (pages 43-46) and 12.2 (pages 55-56) of the OU 2 ROD; Sections 9.2 (pages 46-49) and 12.2 (pages 55-57) of the OU 3 ROD; and the Section "Description of Significant Differences" (pages 13-15) of the OU 2 ESD.

50. If Settling Defendant objects to the modification it may, within 30 days after EPA's notification, seek dispute resolution under Paragraph 156 (Record Review).

51. The Remedial SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if Settling Defendant invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Defendant shall implement all Work required by such modification. Settling Defendant shall incorporate the modification into the Final OU 2 Remedial Design, OU 2 Remedial Action Work Plan, Final OU 3 Remedial Design, or OU 3 Remedial Action Work Plan under Paragraph 43, 44, 45, or 46, as appropriate.

52. Nothing in this Section shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

53. Nothing in this Consent Decree, the Remedial SOW, or any work plans approved or modified pursuant to this Consent Decree constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the Remedial SOW and the work plans will achieve the Performance Standards.

54. Off-Site Shipment of Waste Material. Settling Defendant may ship Waste Material from the Site to an off-Site facility only if it verifies, prior to any shipment, that the off-Site

facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

55. Settling Defendant may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice shall include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Settling Defendant also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Settling Defendant shall provide the written notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.

VIII. REMEDY REVIEW

56. Periodic Review. Settling Defendant shall conduct any studies that EPA requests in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

57. EPA Selection of Further Response Actions. If EPA, in consultation with the State, determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the

requirements of CERCLA and the NCP.

58. Opportunity to Comment. Settling Defendant and, if required by Section 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, 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, 42 U.S.C. § 9621(c), and to submit written comments for the record during the comment period.

59. Settling Defendant's Obligation to Perform Further Response Actions. If EPA selects further response actions relating to the Site, EPA may require Settling Defendant to perform such further response actions, but only to the extent that the reopener conditions in Paragraph 176 or Paragraph 177 (United States' Pre- and Post-Certification Reservations) are satisfied. Settling Defendant may invoke the procedures set forth in Section XXIII (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraph 176 or Paragraph 177 are satisfied, (b) EPA's determination that the Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 156 (Record Review).

60. Submission of Plans. If Settling Defendant is required to perform further response actions pursuant to Paragraph 59, it shall submit a plan for such response action to EPA and the State for approval in accordance with the procedures of Section VII (Performance of the Remedial Design/Remedial Action). Settling Defendant shall implement the approved plan in accordance with this Consent Decree.

IX. REMEDIAL QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

61. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with

"EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001 reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

62. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall develop and/or update a site-specific Quality Assurance Project Plan ("QAPP") for EPA approval, after a reasonable opportunity for review and comment by the State, that is consistent with the SOW, the NCP, and applicable EPA 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 Consent Decree. Settling Defendant shall ensure that EPA and the State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods that are documented in the "USEPA Contract Laboratory Program (CLP) Statement of Work for Inorganic Analysis, ILM05.4," and the "USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2," and any amendments made thereto during the course of the implementation of this Consent Decree; however, upon approval by EPA, after opportunity for review and comment by the State, Settling Defendant may use other analytical methods that are as stringent as or more stringent than the

EPA CLP-approved methods. Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent quality assurance/quality control ("QA/QC") program. Settling Defendant shall use only laboratories that have a documented Quality System that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

63. Upon request, Settling Defendant shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Defendant shall notify EPA and the State not less than 15 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 Settling Defendant to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of Settling Defendant's implementation of the Work.

64. Settling Defendant shall submit to EPA and the State electronic copies (hard copies to be provided upon request) of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

65. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, Ohio Revised Code Chapters 6111 and 3734, and any other applicable federal or state statutes or regulations.

X. PERFORMANCE OF RESTORATION PROJECTS

A. General

66. The Settling Defendant shall finance and, as specified in more detail below, commence and complete performance of the Restoration Projects in accordance with the provisions set forth below in this Section. Such projects should also be in accordance with 43 C.F.R. Part 11, including the factors identified in 43 C.F.R. § 11.82(d). Any work proposed for a Conserved Land shall be technically feasible and in compliance with applicable federal, state, and local laws and regulations.

67. Restoration Work Plan. The Settling Defendant shall, within 60 days after the Effective Date of this Consent Decree, develop and submit to the Trustees for approval in accordance with the Restoration Statement of Work (Appendix H) and the provisions of Section XIV (Approval of Plans, Reports, and Other Deliverables), Restoration Work Plans providing detailed descriptions of activities proposed to be undertaken on the Lisbon Dam and the Conserved Lands to restore, replace, rehabilitate or acquire the equivalent of natural resources that the Trustees allege were injured as a result of releases of hazardous substances into or within the Assessment Area, together with proposed schedules for implementation of such activities. The Restoration Work Plans shall be consistent with the Restoration Plan attached as Appendix D and the Restoration SOW attached as Appendix H.

68. Upon approval of each Restoration Work Plan submitted pursuant to Paragraph 67 above, Settling Defendant shall implement the Restoration Projects described in such approved

Restoration Work Plan, in accordance with the terms and schedules therein, subject to Settling Defendant's right to contest the Trustees' disapproval with respect to any schedule or other item in such Work Plan in accordance with Paragraph 156 (Record Review). All such work shall be performed consistent with this Consent Decree, the Restoration SOW, and the Restoration Work Plan.

B. Lisbon Dam Removal Restoration Project

69. The Trustees have determined that the habitat in the MFLBC will be enhanced by the removal of the Lisbon Dam, at River Mile ("RM") 12.5 of the MFLBC. The removal of the dam and the accompanying restoration activities of 3 acres of adjacent riparian habitat are expected to significantly aid in the establishment of a diverse and varied aquatic community upstream of the Lisbon Dam as well as enhanced recreational opportunities for the local community. The Parties anticipate that removing the dam will likely extend the reach of exceptional warm water habitat of the MFLBC.

70. In accordance with the Restoration Work Plan and the Restoration SOW, the Settling Defendant shall complete the removal of the Lisbon Dam and accompanying restoration no later than five years from the Effective Date of this Consent Decree. If necessary, the five year period may be extended for a reasonable time period with the Trustees' written approval.

71. The Settling Defendant will use best efforts to obtain property access agreements from landowners adjacent to and along the Lisbon Dam reach. "Best efforts" includes the payment of reasonable sums of money to obtain access.

72. Notwithstanding the foregoing, if Settling Defendant fails to complete the removal of the Lisbon Dam due to a force majeure event, Settling Defendant shall propose for Trustee review and approval an alternative project (or projects) of comparable restoration value, and, following Trustee approval of such project(s), shall implement the alternative project(s).

C. Selection of Supervising Contractor for Lisbon Dam Removal

73. All aspects of the Lisbon Dam removal restoration project to be performed by Settling Defendant shall be under the direction and supervision of the Supervising Contractor. Settling Defendant's selection of Golder Associates Inc., 200 Century Parkway, Suite C, Mt. Laurel, New Jersey USA 08054 has been approved by the Trustees. If at any time hereafter Settling Defendant proposes to change this Supervising Contractor, Settling Defendant shall give such notice to the Trustees and must obtain an authorization to proceed from the Trustees before the new Supervising Contractor performs, directs, or supervises any aspect of the Lisbon Dam Removal Restoration Project under this Consent Decree.

74. If the Trustees disapprove of a proposed replacement Supervising Contractor, the Trustees will notify Settling Defendant in writing. Settling Defendant shall submit to the Trustees a list of contractors including the qualifications of each contractor that would be acceptable to them within 30 days after receipt of the Trustees' disapproval of the contractor previously proposed. The Trustees will provide written notice of the names of any contractor(s) that they disapprove and authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify the Trustees of the name of the contractor selected within 21 days of the Trustees' authorization to proceed.

75. If the Trustees fail to provide written notice of their authorization to proceed or disapproval as provided in this subsection and this failure prevents Settling Defendant from meeting one or more deadlines in the Restoration Work Plan, Settling Defendant may seek relief under Section XXII (Force Majeure).

D. Conserved Lands

76. General

a. Within 60 days after approval of the Restoration Work Plan, Settling Defendant shall fund the "ROC Conservation Trust" in the amount of $366,000. The Trust assets shall be utilized by a land conservation organization as Grantee of the Trust (the "Trust Grantee"), as identified in the approved Restoration Work Plan, to complete the conservation of Conserved Lands in the form of a Conservation Easement ("CE") or an Environmental Covenant ("EC") (collectively the "Conservation Instruments") or, in the alternative, General Warranty Deeds in the event that property owners whose lands are to be conserved deed their properties over to the Trust Grantee in addition to placing Conservation Instruments on the properties. Conservation Instrument Templates are attached as Appendix I. The Conserved Lands shall include those certain parcels of land described below in Paragraph 77 as Priority Properties and/or Alternate Properties described in subpart d below. The entire amount of the Trust funds will be used to acquire Conserved Lands in the Little Beaver Creek watershed and City of Salem drinking water source area, and to fund Trust Grantee's reasonable fees for managing the Conservation Trust and obtaining the Conservation Easements. Grantee of funds will maximize acreage conserved. If the Restoration Work Plan, approved by the Trustees, requires a transfer of any Conserved Lands to Trust Grantee, Settling Defendant shall ensure that the Conserved Lands be transferred to the Trust Grantee.

b. At least 30 days prior to Trust Grantee acquiring an interest in any Conserved Lands, Settling Defendant shall submit to the Trustees for approval: i) draft Conservation Instruments relating to the Conserved Lands that are to be

conserved by the Trust Grantee using the ROC Conservation Trust in accordance with this Consent Decree; and ii) a description of all interests in such Conserved Lands that would not be subject to the Environmental Covenant under Ohio Revised Code Section 5301.86(A), absent a subordination agreement. Each draft Conservation Instrument shall be consistent with and in substantially the same form as the respective Conservation Instruments Templates attached as Appendix I. Within 30 days after approval of any draft Conservation Instrument and signature by the Trust Grantee, Settling Defendant shall present the Conservation Instrument to Trustees for signature. Settling Defendant shall be held responsible under this Consent Decree for any violation or breach of an EC or CE.

c. Conserved Lands must not include any land with:

   i. known or suspected releases of hazardous substances or hazardous wastes; or

   ii. easements, rights of entry, interests, or other encumbrances that are inconsistent with the restoration goals described in the Restoration Plan, unless such rights, interests, or encumbrances are subordinated and/or the Trustees agree in writing that the property can be considered.

d. Settling Defendant shall give priority to conserving the Priority Properties. If some or all of the Priority Properties cannot be conserved, then the Settling Defendant shall conserve Alternate Properties for the balance of the required minimum number of 153 acres of Conserved Lands. These Alternate Properties shall meet the Alternate Properties Screening Criteria identified in Appendix K.

e. The Trust Grantee will select the type of the Conservation Instrument that optimizes the use of Trust money consistent with the templates provided in Appendix I. To ensure the suitable environmental condition of the real estate,

Settling Defendant shall consult with the Trustees prior to approving the selection of any Conserved Lands.

f. Access to the Conserved Lands shall be negotiated by the Parties and governed by the Conservation Instruments.

77. Priority Properties. The Priority Properties are:

a. Riparian and forested land at dairy farms at RM 35 and RM 33.3 of the MFLBC (estimated acreage 72 acres);

b. Egypt swamp riparian land (estimated acreage 18 acres);

c. Riparian and forested land near RM 31 of the MFLBC (estimated acreage 20 acres);

d. Properties that will protect the water resources of the City of Salem, that fall within the City's Source Water Protection Areas for ground water and surface water, as depicted in the map attached to Appendix K (estimated acreage 40 acres);

e. Three (3) acres of riparian habitat adjacent to the Lisbon, Ohio dam located at Willow Grove Park; and

f. Seven (7) acres of existing wetlands and adjacent habitat in the northwest section of the Former Nease Property.

78. The Settling Defendant shall complete the acquisition of the Conserved Lands no later than five years from the Effective Date of this Consent Decree, which may be extended, if necessary, for a reasonable time period with the Trustees' written approval.

79. All Conservation Instruments on the Conserved Lands shall run with the land in perpetuity unless otherwise agreed to by the Trustees. Each Conservation Instrument shall provide that DOI and the State, or their designees, as Trustees for the injured natural resources

benefitted by the Conserved Lands, have third-party rights of enforcement with regard to the Conserved Lands. Settling Defendant shall cause the Conservation Instruments to be recorded in the County Recorder's office of the County in which the conserved land is situated and shall provide file-stamped copies to the Trustees within 60 days of recording.

XI. REMEDIAL ACCESS AND INSTITUTIONAL CONTROLS

A. Access to Remedial Properties

80. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by the Settling Defendant:

a. Settling Defendant shall, commencing on the date of lodging of the Consent Decree, provide the United States, the State, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Consent Decree including, but not limited to, the following activities: (1) monitoring the Remedial Work; (2) verifying any data or information submitted to the United States or the State; (3) conducting investigations regarding contamination at or near the Site; (4) obtaining samples; (5) assessing the need for, planning, or implementing additional response actions at or near the Site; (6) assessing implementation of quality assurance and quality control practices as defined in the approved CQAP; (7) implementing the Remedial Work pursuant to the conditions set forth in Paragraph 178 (Remedial Work Takeover); (8) inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXIX (Access to Information); (9) assessing Settling Defendant's compliance with the Consent Decree; (10) determining whether the Site or other real property is being

used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and (11) implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls and the requirements of the ICIAP.

b. Commencing on the date of lodging of the Consent Decree, Settling Defendant shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure of Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action or Remedial O&M. The restrictions shall include, but not be limited to: maintain fences and signs that secure the Site; prevent digging or disturbance of the soil caps at the Former Nease Property; maintain the soil caps at the Site and compliance with all aspects of the OU 2 and OU 3 Remedial O&M Plans or any other plan developed under the Remedial SOW, in accordance with the OU 2 ROD, OU 3 ROD, OU 2 ESD, and this Consent Decree; prohibit drilling and use of groundwater unless and until all Performance Standards are met; prohibit residential use of Site areas that have contaminants remaining at levels that do not allow unrestricted use or unlimited access; prohibit use of groundwater where a contamination plume has emanated from the Site unless and until all Performance Standards are met; prohibit construction over areas where a vapor intrusion pathway may occur unless such construction is outfitted with adequate mitigation measures for the vapors; and comply with the Soil Management Plan (as described in the Statement of Work Section II.A.5.g.) and groundwater restrictions on and off the Former Nease Property where DNAPL and other

contaminants of concern have been released to the soil and groundwater.

c. Settling Defendant shall:

i. Execute and record in the appropriate land records office Remedial Proprietary Controls that: (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 80.a; and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 80.b including, but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP, as further specified in this subparagraph c.

ii. The Remedial Proprietary Controls shall be granted to one or more of the following persons, as approved by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) Settling Defendant and its representatives, and/or other appropriate grantees. If any Remedial Proprietary Controls are granted to Settling Defendant pursuant to this Paragraph 80, then Settling Defendant shall monitor, maintain, report on, and enforce such Remedial Proprietary Controls.

iii. In accordance with the schedule set forth in the ICIAP, submit to EPA for review and approval regarding such real property: (i) draft Remedial Proprietary Controls, in substantially the form attached hereto as Appendix G-1, that are enforceable under Ohio law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, that shows title to the land affected by the Remedial Proprietary Controls to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best

efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances).

iv. Within 30 days after EPA's approval and acceptance of the Remedial Proprietary Controls and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the title insurance commitment, or other title evidence, to affect the title adversely, record the Remedial Proprietary Controls with the appropriate land records office.

v. Within 30 days after recording the Remedial Proprietary Controls, Settling Defendant shall provide EPA and the State with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Remedial Proprietary Controls showing the clerk's recording stamps. If the Remedial Proprietary Controls are to be conveyed to the United States, the Remedial Proprietary Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

B. <u>Institutional Controls on Remedial Properties</u>

81. If the Site, or any other real property where access and/or land/water use restrictions is needed, is owned or controlled by persons other than the Settling Defendant:

a. Settling Defendant shall use best efforts to secure from such persons:

i. An agreement to provide access thereto for the United States, the State, and Settling Defendant, their representatives, contractors, and subcontractors, to conduct any activity regarding the Consent Decree including, but not limited

to, those activities listed in Paragraph 80.a.;

ii. An agreement, enforceable by Settling Defendant and the United States, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action or Remedial O&M. The agreement shall include, but not be limited to the land/water use restrictions listed in Paragraph 80.b.; and

iii. The execution and recordation in the appropriate land records office of Remedial Proprietary Controls, that (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 80.a., and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 80.b., including, but not limited to, the specific restrictions listed therein and any land/water use restrictions listed in the ICIAP. The Remedial Proprietary Controls shall be granted to: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, and (iii) Settling Defendant and its representatives, and/or (iv) other appropriate grantees. The Remedial Proprietary Controls, other than those granted to the United States and/or the State as applicable, shall include a designation that EPA and/or the State, as applicable, is a third party beneficiary, allowing EPA and/or the State, as applicable, to maintain the right to enforce the Remedial Proprietary Controls without acquiring an interest in real property. If any Remedial Proprietary Controls are granted to Settling Defendant pursuant to this

Paragraph 81, then Settling Defendant shall monitor, report on, and enforce such Remedial Proprietary Controls.

b. In accordance with the schedule set forth in the ICIAP, Settling Defendant shall submit to EPA for review and approval, with a copy to the State, with respect to such property: (i) draft Remedial Proprietary Controls, in substantially the form attached hereto as Appendix G-2, that are enforceable under state law; and (ii) a current title insurance commitment, or other evidence of title acceptable to EPA, that shows title to the land affected by the Remedial Proprietary Controls to be free and clear of all prior liens and encumbrances, except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances.

c. Within 30 days of EPA's approval and acceptance of the Remedial Proprietary Controls and the title evidence, Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the title insurance commitment, or other title evidence, to affect the title adversely, record the Remedial Proprietary Controls with the appropriate land records office. Within 30 days after the recording of the Remedial Proprietary Controls, Settling Defendant shall provide EPA and the State with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Remedial Proprietary Controls showing the clerk's recording stamps. If the Remedial Proprietary Controls are to be conveyed to the United States, the Remedial Proprietary Controls and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of

Justice Title Standards 2001, and approval of the sufficiency of title shall be obtained as required by 40 U.S.C. § 3111.

82. For purposes of Paragraphs 80 and 81, "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, Remedial Proprietary Controls, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within 60 days of EPA's approval of the ICIAP, Settling Defendant has not: (a) obtained agreements to provide access, restrict land/water use or record Remedial Proprietary Controls, as required by Paragraphs 81.a.; or (b) obtained, pursuant to Paragraph 80.c.ii. or 81.b., agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Remedial Proprietary Controls, Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendant has taken to attempt to comply with Paragraph 80 or 81. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access, agreements to restrict land/water use, Remedial Proprietary Controls, or the release or subordination of a prior lien or encumbrance. Settling Defendant shall reimburse the United States under Section XIX (Payment of Response Costs) for all costs incurred, direct or indirect, by the United States in obtaining such access, agreements to restrict land/water use, Remedial Proprietary Controls, and/or the release/subordination of prior liens or encumbrances including the cost of attorney time and the amount of monetary consideration paid or just compensation.

83. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at or in connection with the Site, Settling Defendant shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls.

84. Notwithstanding any provision of the Consent Decree, the United States and the

State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. REMEDIAL REPORTING REQUIREMENTS

85. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and Ohio EPA two copies (one copy to each agency) of written monthly progress reports of all Remedial Action(s) that: (a) describe the actions that 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 Defendant or its contractors or agents in the previous month; (c) identify all plans, reports, 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 Remedial Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Involvement Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendant shall submit these progress reports to EPA and the Ohio EPA by the tenth day of every month following the lodging of this Consent Decree. Following certification of Remedial Action Construction Completion pursuant to Section XVII.A., Settling Defendant may request that EPA reduce the frequency with which Settling

Defendant must submit these progress reports. If requested by EPA, Settling Defendant shall also provide briefings for EPA and/or Ohio EPA to discuss the progress of the Remedial Work.

86. Settling Defendant shall notify EPA and Ohio EPA 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.

87. Upon the occurrence of any event during performance of the Remedial Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, Section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, Ohio Administrative Code § 3750.25 and Ohio Revised Code § 3750.06. Settling Defendant shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator) and the Ohio EPA Project Coordinator or the Alternate Ohio EPA Project Coordinator, or, in the event that neither the EPA Project Coordinator nor Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency and Ohio EPA's Spill Hotline at 1-800-282-9378. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304, Ohio Administrative Code § 3750.25 and Ohio Revised Code § 3750.06.

88. Within 20 days after the onset of such an event, Settling Defendant shall furnish to EPA and the State a written report, signed by Settling Defendant's Project Coordinator, setting forth the events that occurred and the measures taken, and to be taken, in response thereto. Within 30 days after the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

89. Settling Defendant shall submit electronic copies of all plans, reports, data, and

other deliverables required by the Remedial SOW, the OU 2 Remedial Action Work Plan, the OU 3 Remedial Action Work Plan, the OU 2 Remedial O&M Plan, the OU 3 Remedial O&M Plan, the ICIAP, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit electronic copies of all such plans, reports, data, and other deliverables to the State. Upon request by EPA, Settling Defendant shall submit hard copies of all or any portions of any deliverables Settling Defendant is required to submit pursuant to the provisions of the Consent Decree.

90. All reports and other documents submitted by Settling Defendant to EPA (other than the monthly progress reports referred to above) that purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendant. The reports and other documents referred to in this and similar paragraphs may be signed by Settling Defendant's Project Coordinator so long as Settling Defendant provides EPA with documentation that the Project Coordinator is an authorized representative of Settling Defendant.

XIII. RESTORATION REPORTING REQUIREMENTS

91. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to the Trustees two copies (one copy to each agency) of written monthly progress reports of all Restoration Projects that, in addition to information required under Section VI of the Restoration SOW: (a) describe the actions that have been taken toward achieving compliance with the Restoration Work of this Consent Decree during the previous month; (b) include a summary of any results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous month; (c) identify all plans, reports, and other deliverables required by the Restoration Work of this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, any

data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Restoration Projects, and a description of efforts made to mitigate those delays or anticipated delays; and (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to the Trustees or that have been approved by the Trustees. Following the Effective Date of this Consent Decree until the date that the Trustees notify Settling Defendant pursuant to Section XVII (Certification of Completion) (unless the due date or reporting frequency is modified or the requirement is waived by the Trustees), Settling Defendant shall submit these progress reports to the Trustees by the tenth day of every month while the dam removal project is underway. Once the dam removal project has been completed and the Restoration Completion Report for that project has been submitted to the Trustees, progress reports shall be submitted on a quarterly basis unless Conserved Lands are being considered for conservation, in which case monthly reports shall continue to be submitted. Such monthly reports, however, need only include a brief description of the properties' value from a natural resource restoration standpoint, a brief summary of the ecological habitat and restoration activities, if any, and any documents related or pertaining to Conservation Instruments. If requested by the Trustees, Settling Defendant shall also provide briefings for the Trustees to discuss the progress of the Restoration Projects.

92. Settling Defendant shall notify the Trustees of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, any data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

93. Settling Defendant shall submit three copies of all plans, reports, any data, and

other deliverables required by the Restoration Work Plans, or any other approved plans to the Trustees in accordance with the schedules set forth in such plans. Upon request by Settling Defendant and approval by the Trustees, Settling Defendant shall submit in electronic form all or any portions of any deliverables Settling Defendant is required to submit pursuant to the provisions of the Consent Decree.

94. All reports and other documents submitted by Settling Defendant to the Trustees (other than the monthly progress reports referred to above) that purport to document Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendant.

XIV. APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

A. EPA Approvals

95. Initial Submissions.

a. After review of any Remedial Work plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) disapprove, in whole or in part, the submission; or (4) any combination of the foregoing.

b. EPA also may modify the initial submission to cure deficiencies in the submission if: (1) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Remedial Work; or (2) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

96. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 95.a. (3) or (4), or if required by a notice of approval upon specified conditions under Paragraph 95.a. (2), Settling Defendant shall, within 30 days or such longer time as approved by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval, with a copy to the State. After review of the resubmitted plan, report, or other deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Settling Defendant to correct the deficiencies; or (e) any combination of the foregoing.

97. Material Defects. If a resubmitted plan, report, or other deliverable contains a material defect, and the resubmitted plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 96 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 159. The provisions of Section XXIII (Dispute Resolution) and XXIV (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Defendant's submissions under this Section.

98. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 95 (Initial Submissions) or Paragraph 96 (Resubmissions), of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under the Consent Decree; and (b) Settling Defendant shall take action required by such plan, report, or other deliverable, or portion thereof, subject only to its right to invoke the Dispute Resolution procedures set forth in Section XXIII (Dispute Resolution) with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraphs 95 or 96 shall not relieve Settling Defendant of any liability for stipulated penalties under Section XXIV (Stipulated Penalties).

B. Trustee Approvals

99. Initial Submissions.

a. After review of any Restoration Work plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree, the Trustees shall: (1) approve, in whole or in part, the submission; (2) approve the submission upon specified conditions; (3) disapprove, in whole or in part, the submission; or (4) any combination of the foregoing.

b. The Trustees also may modify the initial submission to cure deficiencies in the submission if: (1) the Trustees determine that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Restoration Work; or (2) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

100. Following approval or, approval upon conditions, or modification by the Trustees of any submittal pursuant to Paragraph 99, the Settling Defendant shall proceed to take any action required by the submittal, as approved or modified by the Trustees, subject only to any right of Settling Defendant to contest such disapproval or modification under Section XXIII (Dispute Resolution).

101. Resubmission.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 99.a(3) or (4), the Settling Defendant shall, within 30 days or such longer time as approved by the Trustees, correct the deficiencies and resubmit the report, or other item for approval.

b. Notwithstanding the receipt of a notice of disapproval of any submission pursuant to Paragraph 99.a(3) or (4), the Settling Defendant shall proceed, at the direction of the Trustees, 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 the Settling Defendant of any liability for stipulated penalties under Section XXIV (Stipulated Penalties).

102. In the event that a resubmitted submission, or portion thereof, is disapproved by the Trustees, the Trustees may again require the Settling Defendant to correct the deficiencies, in accordance with Paragraph 101. Trustees also retain the right to modify or develop the resubmitted submission. The Settling Defendant shall implement any submission as modified or developed by the Trustees, subject only to the right of the Settling Defendant to invoke the procedures set forth in Section XXIII (Dispute Resolution).

103. If upon resubmission, a report or item is disapproved or modified by the Trustees due to a material defect, the Settling Defendant shall be deemed to have failed to submit such report, or item timely and adequately unless the Settling Defendant invokes the dispute resolution procedures set forth in Section XXIII (Dispute Resolution) and the Trustees' action is overturned pursuant to that Section. The provisions of Section XXIII (Dispute Resolution) and Section XXIV (Stipulated Penalties) shall govern the implementation of the Restoration Work Plan and Restoration Projects and accrual and payment of any stipulated penalties during Dispute Resolution. If the Trustees' 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 XXIV (Stipulated Penalties).

104. All items required to be submitted to Trustees for approval under this Consent Decree shall, upon approval or modification by the Trustees, be enforceable under this Consent

Decree. In the event the Trustees approve or modify a portion of a report, or other item required to be submitted to the Trustees under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XV. PROJECT COORDINATORS

A. Remedial Project Coordinators

105. Within 20 days after lodging this Consent Decree, Settling Defendant and EPA will notify each other and the State, in writing, of the name, address, telephone number, and email address of their respective designated Remedial Project Coordinators and Alternate Remedial Project Coordinators. If a Remedial Project Coordinator or Alternate Remedial 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 change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Defendant's Remedial Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Remedial Work. Settling Defendant's Remedial Project Coordinator shall not be an attorney for Settling Defendant 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.

106. EPA may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Remedial Project Coordinator and Alternate Remedial Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. § 300. In addition, EPA's Remedial Project Coordinator or Alternate Remedial Project Coordinator shall have authority, consistent with the NCP, to halt any Remedial Work required by the

Consent Decree and to take any necessary response action when he or she 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.

B. Restoration Project Coordinators

107. Within 20 days after lodging this Consent Decree, Settling Defendant and Trustees will notify each other, in writing, of the name, address, telephone number and email address of their respective designated Restoration Project Coordinators and Alternate Restoration Project Coordinators. If a Restoration Project Coordinator or Alternate Restoration 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 change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Defendant's Restoration Project Coordinator shall be subject to disapproval by the Trustees and shall have the technical expertise to adequately oversee all aspects of the Restoration Work. He or she may assign other representatives, including other contractors, to serve as a representative for oversight of performance of daily operations during the restoration.

108. The Trustees may designate other representatives, including but not limited to DOI or State employees, and Trustees' contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree.

XVI. REMEDIAL PERFORMANCE GUARANTEE

109. To ensure the full and final completion of the Remedial Work, Settling Defendant shall establish and maintain a performance guarantee, in the amount of $13.45 million. The performance guarantee must be established within 30 days of the Effective Date of the Consent Decree. The performance guarantee, which must be satisfactory in form and substance to EPA,

shall be in the form of one or more of the following mechanisms:

a. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (1) that has the authority to issue letters of credit and (2) whose letter-of-credit operations are regulated and examined by a federal or state agency; or

b. A trust fund established for the benefit of EPA that is administered by a trustee (1) that has the authority to act as a trustee and (2) whose trust operations are regulated and examined by a federal or state agency.

110. Settling Defendant has selected, and EPA has found satisfactory, as an initial performance guarantee letter-of-credit pursuant to Paragraph 109, in the form attached hereto at Appendix J. Within 30 days after the Effective Date, Settling Defendant shall execute or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents attached hereto at Appendix J, and such performance guarantee(s) shall thereupon be fully effective. Within 45 days after the Effective Date, Settling Defendant shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Regional Financial Management Officer in accordance with Section XXXI (Notices and Submissions) of this Consent Decree, with a copy to Cynthia Mack-Smeltzer, Region 5 Financial Assurance Specialist, U.S. EPA Region 5, Resource Management Division, 77 W. Jackson Boulevard (MF-10J), Chicago, Illinois 60604, and to the United States and EPA and the State as specified in Section XXXI.

111. In the event that EPA determines that a performance guarantee provided by Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the

requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Remedial Work or for any other reason, or in the event that Settling Defendant becomes aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Remedial Work or for any other reason, Settling Defendant, within 30 days after receipt of notice of EPA's determination or, as the case may be, within 30 days after Settling Defendant becomes aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 109 that satisfies all requirements set forth in this Section XVI (Remedial Performance Guarantee); provided, however, that if Settling Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for Settling Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed 60 days. On day 30, Settling Defendant shall provide to EPA a status report on its efforts to obtain the revised or alternative form of guarantee. In seeking approval for a revised or alternative form of performance guarantee, Settling Defendant shall follow the procedures set forth in Paragraph114.b. Settling Defendant’s inability to post a performance guarantee for completion of the Remedial Work shall in no way excuse performance of any other requirements of the Consent Decree, including, without limitation, the obligation of Settling Defendant to complete the Remedial Work in strict accordance with the terms of the Consent Decree. Notwithstanding the above, Settling Defendant will not be subject to an increase in the performance guarantee related to O&M costs prior to completion of Remedial Action Construction as defined in Paragraph 116.

112. Access to Financial Assurance.

a. The commencement of any Remedial Work Takeover pursuant to Paragraph 178 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraph 109, and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Remedial Work assumed by EPA under the Remedial Work Takeover.

b. If, upon issuance of a notice of implementation of a Remedial Work Takeover under Paragraph 177, EPA is unable for any reason to promptly secure the resources guaranteed under any such performance guarantee(s) provided pursuant to Paragraph 109, whether in cash or in kind, necessary to continue and complete the Remedial Work assumed by EPA under the Remedial Work Takeover, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Remedial Work to be performed. Settling Defendant, shall, within 60 days of such demand, pay the amount demanded as directed by EPA.

c. Any amounts required to be paid under this Paragraph 112 shall be paid to EPA to facilitate completion of the Work. Settling Defendant shall deposit the funds demanded under this paragraph into a special account within the EPA Hazardous Substance Superfund or such other account as EPA may specify.

d. If EPA invokes this paragraph and Settling Defendant deposits the funds in accordance with Paragraph 112(c) above, then EPA may not recover performance guarantee funds equivalent to the amount deposited by Settling Defendant in accordance with Paragraph 112(c) above, and Settling Defendant

may reduce its performance guarantee by this amount. EPA reserves its right to recover any amount of the performance guarantee funds that remain in excess of the amount that Settling Defendant deposits in accordance with Paragraph 112 (c) above.

e. If at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless Settling Defendant provides a substitute performance guarantee mechanism in accordance with this Section XVI (Remedial Performance Guarantee) no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee.

f. All EPA Remedial Work Takeover costs not reimbursed under this Paragraph shall be reimbursed as Future Response Costs under Section XIX (Payments for Response Costs) subject to Settling Defendant's right to invoke dispute resolution pursuant to Sections XIX (Payments for Response Costs) and XXIII (Dispute Resolution).

113. Reduction of Amount of Performance Guarantee. If Settling Defendant believes that the estimated cost of completing the Remedial Work has diminished below the amount of performance guarantee established pursuant to Paragraph 109, Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the performance guarantee provided pursuant to this Section so that the amount of the performance guarantee being maintained is not less than the estimated cost of completing all remaining Remedial Work.

Settling Defendant shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the estimated cost of completing the Remedial Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the performance guarantee, Settling Defendant shall follow the procedures set forth in Paragraph 114.b for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph. EPA will notify Settling Defendant in writing of its decision to approve or disapprove Settling Defendant's proposal for a reduction in the amount of the performance guarantee, either to the amount set forth in Settling Defendant's written proposal or to some other amount as selected by EPA. After receiving EPA's written decision, Settling Defendant may reduce the amount of the performance guarantee in accordance with and to the extent permitted by such written decision and shall submit copies of all executed and/or otherwise finalized instruments or other documents required to make the selected performance guarantee(s) legally binding in accordance with Paragraph 114.b. In the event of a dispute, Settling Defendant may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XXIII (Dispute Resolution). No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 111 or 114.b.

114. Change of Form of Performance Guarantee.

a. If, after the Effective Date, Settling Defendant desires to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Settling Defendant may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the

form or the terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 114.b. Any decision made by EPA on a petition submitted under Paragraph 114.b shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendant pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

b. Settling Defendant shall submit a written proposal for a revised or alternative performance guarantee to EPA that shall specify, at a minimum, the estimated cost of completing the Remedial Work, the basis upon which such cost was calculated, and the proposed revised performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section XVI (Remedial Performance Guarantee). Settling Defendant shall submit such proposed revised or alternative performance guarantee to the EPA Regional Financial Management Officer in accordance with Section XXXI (Notices and Submissions), with a copy to Cynthia Mack-Smeltzer, Region 5 Financial Assurance Specialist, U.S. EPA Region 5, Resource Management Division, 77 W. Jackson Boulevard (MF-10J), Chicago, Illinois 60604 and the State. EPA will notify Settling Defendant in writing of its decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative performance

guarantee, Settling Defendant shall execute and/or otherwise finalize all instruments or other documents required to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Settling Defendant shall submit all executed and/or otherwise finalized instruments or other documents required to make the selected performance guarantee(s) legally binding to the EPA Regional Financial Management Officer within 30 days after receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXXI (Notices and Submissions) of this Consent Decree, with a copy to Cynthia Mack-Smeltzer, Region 5 Financial Assurance Specialist, U.S. EPA Region 5, Resource Management Division, 77 W. Jackson Boulevard (MF-10J), Chicago, Illinois 60604 and to the United States, EPA, and the State as specified in Section XXXI (Notices and Submissions).

115. Release of Performance Guarantee. Settling Defendant shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Settling Defendant receives written notice from EPA in accordance with Paragraph 124 hereof that the Remedial Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendant in writing, Settling Defendant may thereafter release, cancel, or discontinue the performance guarantee provided pursuant to this Section. In the event of a dispute, Settling Defendant may release, cancel, or discontinue the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XXIII (Dispute Resolution).

XVII. CERTIFICATION OF COMPLETION

A. Remedial Action Construction Completion

116. For purposes of this Section XVII.A., "Remedial Action Construction" means the construction and operation of a system to achieve Performance Standards, including the performance of all activities necessary for the system to function properly and as designed.

117. As specified in Section IV.C.4 of the attached Remedial SOW, within 60 days of a successful final inspection, the Settling Defendant shall submit a Completion of Construction Report including as-built drawings signed and stamped by a professional engineer. If EPA determines that Remedial Action Construction is not complete, EPA shall so notify the Settling Defendant. EPA's notice must include a description of, and schedule for, the activities that the Settling Defendant must perform to complete Remedial Action Construction. EPA's notice may include a schedule for completion of such activities or may require the Settling Defendant to submit a proposed schedule for EPA approval. The Settling Defendant shall perform all activities described in the EPA notice in accordance with the schedule.

118. If EPA determines, based on the initial or any subsequent Completion of Construction Report, that Remedial Action Construction is complete, EPA shall so notify the Settling Defendant.

B. Completion of the Remedial Action

119. Within 90 days after Settling Defendant concludes that the Remedial Action has been fully performed and the Performance Standards have been achieved, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, and the State. If, after the pre-certification inspection, Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Standards have been achieved, it shall submit a written report requesting certification to EPA for approval, with a

copy to the State, pursuant to Section XIV (Approval of Plans, Reports, and Other Deliverables) within 30 days after the inspection. In the report, a registered professional engineer and Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of the Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of Settling Defendant:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information is, to the best of my knowledge and belief, 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.

120. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendant in writing, with a copy to the State, of the activities that must be undertaken by Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the OU 2 ROD, OU 3 ROD, and OU 2 ESD," as that term is defined in Paragraph 49. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the Remedial SOW or require Settling Defendant to submit a schedule to EPA for approval pursuant to Section XIV (Approval of Plans, Reports, and Other Deliverables). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established

pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution).

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

C. <u>Completion of the Remedial Work</u>

122. Within 90 days after Settling Defendant concludes that all phases of the Remedial Work, other than any remaining activities required under Section VIII (Remedy Review), have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant, EPA, and the State. If, after the pre-certification inspection, Settling Defendant still believes that the Remedial Work has been fully performed, Settling Defendant shall submit a written report by a registered professional engineer stating that the Remedial Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the statement set forth in Paragraph 119 signed by a responsible corporate official of Settling Defendant.

123. If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Remedial Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken by Settling Defendant pursuant to this Consent

Decree to complete the Remedial Work, provided, however, that EPA may only require Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the OU 2 ROD, OU 3 ROD, and OU 2 ESD" as that term is defined in Paragraph 49. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XIV (Approval of Plans, Reports, and Other Deliverables). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution).

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

125. If the Settling Defendant concludes that it has completed all phases of the Remedial Work at the same time it concludes that the Remedial Action has been fully performed, then the Settling Defendant may petition EPA to combine the submission of the Completion of Remedial Action Report and the Completion of Work Report. The decision whether the Settling Defendant may combine the submissions is within EPA's discretion. If EPA allows the Settling Defendant to combine the submissions, the combined report will be required to contain all of the elements required by Sections IV.C.4.b. and IV.C.4.c. of the Remedial SOW, attached as Appendix E. EPA will review the submission according to the standards set forth in Paragraphs 123 and 124 of this Consent Decree.

D. <u>Completion of the Restoration Projects</u>

126. Within 90 days after the Settling Defendant concludes that all of the Restoration Projects in each Restoration Work Plan have been fully performed, the Settling Defendant shall schedule and conduct an inspection to be attended by the Settling Defendant and the Trustees. If, after the inspection, the Settling Defendant still believes that the Restoration Projects have been fully performed, the Settling Defendant shall submit to the Trustees a Restoration Completion Report. The Restoration Completion Report shall comply with the Restoration Work Plans and Restoration SOW and state that the Restoration Projects have been completed in full satisfaction of the requirements of this Consent Decree. The report(s) shall contain the following statement, signed by a responsible corporate official of the Settling Defendant:

> 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.

127. If, after review of the written report(s), the Trustees determine that any portion of the Restoration Projects addressed therein has not been completed in accordance with this Consent Decree, the Trustees shall notify the Settling Defendant in writing of the activities that must be undertaken by the Settling Defendant pursuant to this Consent Decree to complete the Restoration Projects, provided, however, that the Trustees may require the Settling Defendant to perform such activities pursuant to this Paragraph only to the extent that such activities are consistent with the Restoration Work Plan. The Trustees will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree. The Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution).

128. If the Trustees conclude based on the initial or any subsequent report(s) by Settling

Defendant that a Restoration Project has been performed in accordance with this Consent Decree, the Trustees will so notify the Settling Defendant in writing. If and when the Trustees conclude that all Restoration Projects have been performed in accordance with this Consent Decree, then full restoration, for the purposes of this Consent Decree only, has been achieved for the Site, subject to Paragraph 180.

XVIII. EMERGENCY RESPONSE

129. If any action or occurrence during the performance of the Remedial Work 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 Defendant shall, subject to Paragraph 130, 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 and the Ohio EPA Project Coordinator or the Alternate Ohio EPA Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the Regional Duty Officer, EPA Region 5 Emergency Response Branch 24-hour telephone number at 312-353-2318 and Ohio EPA's Spill Hotline at 1-800-282-9378. Settling Defendant 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 Remedial SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA all costs of the response action under Section XIX (Payment of Response Costs).

130. Subject to Section XXV (Covenants by Plaintiffs), nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States

and/or the State (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XIX. PAYMENT OF RESPONSE COSTS

131. Settling Defendant shall pay to EPA, Department of Justice and the State all Past and Future Response Costs not inconsistent with the NCP.

a. Within 45 days after the Effective Date, Settling Defendant shall pay to EPA $394,870 [$315,990 in EPA past costs and $78,880 in DOJ past costs] in payment for Past Response Costs. Payment shall be made in accordance with Paragraph 132 (Payment Instructions).

b. On an annual basis, EPA will send Settling Defendant a bill requiring payment that includes an Itemized Cost Summary that includes Future Response Costs incurred by EPA, including costs of its contractors, and a U.S. DOJ-prepared cost summary that reflects costs incurred by DOJ and its contractors, if any. Settling Defendant shall make all payments within 45 days after Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 133, in accordance with Paragraph 132 (Payment Instructions).

c. The total amount to be paid by Setting Defendant pursuant to Paragraph 131.a and b. shall be deposited by EPA in the Nease Chemical Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

d. Recovery and payment of the State's Past and Future Response Costs shall be governed by the State's DFFOs for Cost Recovery for the Site, entered into between the State and ROC on August 4, 2016.

132. Payment Instructions. All payments to EPA required elsewhere in this Consent Decree to be made in accordance with this Paragraph 132 shall be made as follows:

a. If the payment amount demanded in the bill is more than $10,000, payment shall be made to EPA by Electronic Funds Transfer ("EFT"), the Automated Clearinghouse ("ACH") for receiving U.S. currency, or payment through the U.S. Department of Treasury website (www.pay.gov), in accordance with the current procedures available to Settling Defendant from U.S. EPA Region 5. Payment shall be accompanied by a statement identifying the name and address of the party making the payment, EPA Hazardous Substance Superfund, Nease Chemical Special Account, EPA Site ID Number 05A3, and DOJ Case Number (90-11-2-608/2).

b. If the amount demanded in the bill is $10,000 or less, Settling Defendant may, in lieu of the procedures in Paragraph 132.a., make the required payment by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund, Nease Chemical Special Account" referencing the name and address of the party making the payment, EPA Site ID Number 05A3, and DOJ Case No. 90-11-2-608/2. Settling Defendant shall send the check(s) to: United States Environmental Protection Agency, Superfund Payments, Cincinnati Finance Center, P.O. Box 979076, St. Louis, MO 63197-9000.

c. At the time of payment, Settling Defendant shall send notice that payment has been made to the United States, to EPA and to the Regional Financial

Management Officer and, in addition, to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268, in accordance with Section XXXI (Notices and Submissions).

133. Settling Defendant may contest any Future Response Costs billed under Paragraph 131.b if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 30 days after receipt of the bill and must be sent to the United States pursuant to Section XXXI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection.

134. In the event of an objection, Settling Defendant shall pay all uncontested Future Response Costs to the United States within 45 days of Settling Defendant's receipt of the bill requiring payment. Simultaneously, Settling Defendant shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendant shall send to the United States, as provided in Section XXXI (Notices and Submissions), 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, Settling Defendant shall initiate the Dispute Resolution

procedures in Section XXIII (Dispute Resolution).

135. If the United States prevails in the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the United States within ten days after resolution of the dispute. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States within five days after the resolution of the dispute. Settling Defendant shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with Paragraph 132 (Payment Instructions). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

136. Interest. In the event that any payment for Future Response Costs required under this Section is not made by the date required, Settling Defendant shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of 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 Defendant’s failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 160.

XX. PAYMENT OF ASSESSMENT COSTS

137. Payments to United States by Settling Defendant.

a. Within 45 days after the Effective Date of this Consent Decree, Settling Defendant shall pay to the United States $195,000 in reimbursement of DOI’s Past Assessment Costs.

b. Payment shall be made to the United States, by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing DOJ Case Number 90-11-3-608/1. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Ohio following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

138. Payment to State of Ohio by Settling Defendant. Within 45 days after the Effective Date, Settling Defendant shall pay $375,680 to the State of Ohio in reimbursement of the State of Ohio's Past Assessment Costs. The payment shall be made in the form of an Electronic Funds Transfer according to payment instructions provided by Ohio EPA following lodging of the Consent Decree. A copy of the Electronic Funds Transfer transmittal shall be sent to: Steven Snyder or his successor, DERR Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049; and to Scott Hainer, Paralegal, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215.

139. Notice of Payment. Upon making payments required under this Section, the Settling Defendant making the payment shall send notice to the Chief, Environmental Enforcement Section, U.S. Department of Justice; the Department of the Interior, Restoration Fund Manager; the Department of the Interior, Office of the Solicitor, and, as to the State of Ohio, the Fiscal Officer, DERR Ohio EPA, and Chief, Environmental Enforcement Section, Ohio Attorney General's Office, in accordance with Section XXXI (Notices and Submissions).

140. In the event that Settling Defendant does not make any payment required by this

Section XX (Payment of Assessment Costs) when due, Settling Defendant shall pay Interest on the unpaid balance commencing on the payment due date and accruing through the date of full payment. All payments required pursuant to this Paragraph shall be made in the same manner and directed to the same funds or accounts as specified in Paragraphs 137 and 138. Any payments required by this Paragraph shall be in addition to any other remedies provided by this Consent Decree for failure to make timely payments required under this Section.

141. Settling Defendant shall pay for the cost of the Trustees' Future Assessment Costs, including the cost of oversight of the Restoration Projects. Settling Defendant shall reimburse the Federal Trustee for its reasonable Future Assessment Costs within 60 (sixty) days of receipt of a cost summary of the Federal Trustee's actual costs and expenses, and shall reimburse the State Trustee for its reasonable Future Assessment Costs within 60 (sixty) days of receipt of a cost summary of the State Trustees actual costs and expenses. Each cost summary shall provide the hours worked by each Trustee representative and detail any expenses incurred. Such Future Assessment Costs will be billed once per year for the Trustees, and shall be paid in the same manner as described in Paragraphs 137 and 138 above. Settling Defendant shall be responsible for determining the appropriate wiring instructions in order to make the required payments to DOI and the State. In the event that payments required by this Paragraph are not made within sixty (60) days of Settling Defendant's receipt of the cost summary, Settling Defendant shall pay Interest on the unpaid balance. Interest shall accrue commencing on the sixty-first (61st) day after Settling Defendant's receipt of the cost summary and shall continue to accrue through the date of payment.

XXI. INDEMNIFICATION AND INSURANCE

A. Settling Defendant's Indemnification of the United States

142. The United States does not assume any liability by entering into this Consent

Decree or by virtue of any designation of Settling Defendant as DOI's and EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as DOI's and EPA's authorized representatives under Section 104(e) of CERCLA. Further, Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither Settling Defendant nor any such contractor shall be considered an agent of the United States.

143. The United States shall give Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 142, and shall consult with Settling Defendant prior to settling such claim.

144. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract,

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

145. No later than 30 days after lodging of this Consent Decree, Settling Defendant shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 121 of Section XVII (Certification of Completion), commercial general liability insurance with limits of two million dollars, for any one occurrence, and automobile liability insurance with limits of two million dollars, combined single limit, naming the United States as an additional insured with respect to all liability arising out of the activities by or on behalf of Settling Defendant pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that its 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 Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA and the Trustees certificates of such insurance, and, if requested, a copy of each insurance policy. Settling Defendant shall resubmit such certificates and, if requested, copies of policies each year on the anniversary of the Effective Date. If Settling Defendant demonstrates by evidence satisfactory to EPA and Trustees 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 Defendant needs only to provide that portion of the insurance described

above which is not maintained by the contractor or subcontractor.

B. Settling Defendant's Indemnification of the State

146. The State does not assume any liability by entering into this Consent Decree or by virtue of any designation of Settling Defendant as the State's authorized representative to carry out the Restoration Projects. Settling Defendant shall indemnify, save and hold harmless the State and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as the State's authorized representative to carry out the Restoration Projects. Further, the Settling Defendant agrees to pay the State all costs it incurs including, but not limited to, attorney's fees and other expenses of litigation and settlement arising from, or on account of, claims made against the State based on negligent or other wrongful acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The State shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither Settling Defendant nor any such contractor shall be considered an agent of the State.

147. The State shall give Settling Defendant notice of any claim for which the State plans to seek indemnification pursuant to Paragraph 146, and shall consult with Settling Defendant prior to settling such claim.

148. Settling Defendant covenants not to sue and agrees not to assert any claims or

causes of action against the State for damages or reimbursement or for set-off of any payments made or to be made to the State, arising from or on account of any contract, agreement, or arrangement between Settling Defendant and any person for performance of Restoration Projects on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendant shall indemnify and hold harmless 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 Settling Defendant and any person for performance of Restoration Projects on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXII. FORCE MAJEURE

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

150. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Settling Defendant intends or may intend to assert a claim of force majeure, Settling Defendant shall notify orally EPA's Project Coordinator or the Trustees' Project Coordinator, as applicable, or, in the absence of EPA's or the Trustees'

Project Coordinator, EPA's or the Trustees' Alternate Project Coordinator or, in the event the designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, the Director of the FWS, Region 3, and Ohio EPA, DERR Assessment, Remediation and Corrective Action (ACRA) Manager within two business days of when Settling Defendant first knew that the event might cause a delay. Within 14 days thereafter, Settling Defendant shall provide in writing to EPA and/or the Trustees, as applicable, 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; Settling Defendant's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant, any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should have known. Failure to comply with the above requirements regarding a force majeure event shall preclude Settling Defendant from asserting any claim of force majeure regarding that event, provided, however, that if EPA and/or the Trustees, despite the late notice, are able to assess to their satisfaction whether the event is a force majeure under Paragraph 149, EPA and/or the Trustees may, in their unreviewable discretion, excuse in writing Settling Defendant's failure to submit timely notices under this Paragraph.

151. If EPA, after a reasonable opportunity for review and comment by the State, and/or the Trustees (as applicable) agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected

by the force majeure will be extended by EPA, after a reasonable opportunity for review and comment by the State, and/or the Trustees (as applicable) 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 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, and/or the Trustees (as applicable) do not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA and/or the Trustees, as applicable, will notify Settling Defendant in writing of their decision. If EPA, after a reasonable opportunity for review and comment by the State, and/or the Trustees (as applicable) agree that the delay is attributable to a force majeure event, the EPA and/or the Trustees, as applicable, will notify Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

152. If Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XXIII (Dispute Resolution), it shall do so no later than 15 days after receipt of the notice from the Trustees and/or EPA, as applicable. In any such proceeding, Settling Defendant 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 Defendant complied with the requirements of Paragraphs 150 and 151, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to the Trustees and/or EPA, as applicable, and the Court.

XXIII. DISPUTE RESOLUTION

153. Unless otherwise expressly provided for in this Consent Decree, the dispute

resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States and/or the State to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

154. Any dispute regarding 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 30 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 Settling Defendant contesting the action or determination of EPA and/or the Trustees sends a written Notice of Dispute in accordance with this Section.

155. Statements of Position.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under Paragraph 154, then the position advanced by EPA and/or the Trustees, as applicable, shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on EPA and/or the Trustees, as applicable, 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 Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 156 (Record Review) or Paragraph 157.

b. Within 30 days after receipt of Settling Defendant's Statement of Position, EPA and/or the Trustees, as applicable, will serve on Settling Defendant their

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 and/or the Trustees. The Statement of Position advanced by EPA and/or the Trustees, as applicable, shall include a statement as to whether formal dispute resolution should proceed under Paragraph 156 (Record Review) or 157. Within 15 days after Settling Defendant's receipt of the Statement of Position advanced by EPA and/or the Trustees, Settling Defendant may submit a Reply.

c. If there is a disagreement between EPA and/or the Trustees, as applicable, and Settling Defendant as to whether dispute resolution should proceed under Paragraph 156 (Record Review) or 157, the parties to the dispute shall follow the procedures set forth in the paragraph determined to be applicable by EPA and/or the Trustees. However, if Settling Defendant ultimately appeals 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 156 (Record Review) and 157.

156. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action, or any restoration 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 or Restoration Project includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA or the Trustees (as applicable) under this Consent Decree, and the adequacy of the performance of response actions or restoration actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by

Settling Defendant regarding the validity of the provisions of the OU 2 ROD, OU 3 ROD, and OU 2 ESD, or the Restoration Plan.

a. An administrative record of the dispute shall be maintained by EPA as to EPA's selected response action and by Ohio EPA as to any restoration actions, and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA and the Trustees may allow submission of supplemental statements of position by the parties to the dispute.

b. As to disputes pertaining to the response action, the Director of the Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 156.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 156.d.

c. As to disputes pertaining to restoration actions, the Regional Director of FWS and the Ohio EPA, DERR ARCA Manager or their designees will jointly issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 156.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 156.d.

d. Any administrative decision made by EPA or the Trustees pursuant to Paragraph 156.c and d shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendant with the Court and served on all Parties within ten days after receipt of the administrative decision. The motion shall include a description of the matter in dispute, the efforts made by

the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. EPA and the Trustees may file a response to Settling Defendant's motion.

e. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Superfund Division Director, the Regional Director of FWS, and/or Ohio EPA DERR ARCA Manager is arbitrary and capricious or otherwise not in accordance with law. Judicial review of such decision shall be on the administrative record compiled pursuant to Paragraph 156.a.

157. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action, restoration action, or Restoration Project 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 Defendant's Statement of Position submitted pursuant to Paragraph 155.a, the Director of the Superfund Division, EPA Region 5, the Regional Director of FWS and the Ohio EPA DERR ARCA Manager as applicable, will issue a final decision resolving the dispute; such decision shall be binding on Settling Defendant unless, within ten days after receipt of the decision, Settling Defendant files with the Court and serves on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. EPA and the Trustees may file a

response to Settling Defendant's motion.

b. Notwithstanding Paragraph 16 (CERCLA Section 113(j), 42 U.S.C. § 9613(j), Record Review of OU 2 ROD, OU 3 ROD, OU 2 ESD and Work), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

158. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendant under this Consent Decree, not directly in dispute, unless EPA and/or the Trustees, as applicable, 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 166. 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 Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXIV (Stipulated Penalties). If Settling Defendant prevails, the stipulated penalties shall not be assessed and shall no longer be applicable.

XXIV. STIPULATED PENALTIES

159. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 160 and 161 to the United States and the State for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XXII (Force Majeure). "Compliance" by Settling Defendant shall include completion of all payments and activities under this Consent Decree or any plan, report, or other deliverable required or approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the Remedial SOW, the Restoration SOW, the OU 2 and OU 3 Remedial

Action Work Plans, the Remedial O&M Plans, the ICIAP, the Restoration Work Plan and any plans, reports, or other deliverables required or approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

160. Stipulated Penalty Amounts – Work (Including Payments and Excluding Plans, Reports, and Other Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in subpart b below:

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

b. Compliance Milestones.

i. Payment of Past and Future Response Costs.

ii. Establishment of escrow accounts in the event of disputes.

iii. Performance of a Remedial Work obligation specified under this Consent Decree, the Remedial SOW, the Final OU 2 RD, the Final OU 3 RD, the ICIAP, the OU 2 Remedial Work Plan, the OU 3 Remedial Work Plan, the OU 2 Remedial O&M Plan, the OU 3 Remedial O&M Plan, and any approved or modified reports, plans, specifications, schedules, and attachments under such work plans, or any other approved or modified reports, plans, specifications, schedules, and attachments under this Consent Decree.

c. The following stipulated penalties shall accrue per violation per day for each failure to establish and fund the ROC Conservation Trust in accordance with Paragraph 76:

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

d. The following stipulated penalties shall accrue per violation per day for each failure to implement any approved Restoration Work Plan in accordance with Section X.A:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th day
$1,000	15th through 30th day
$2,750	31st day and beyond

e. The following stipulated penalties shall accrue per violation per day for each failure to make any payment of Past and Future Assessment Costs:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th day
$1,000	15th through 30th day
$2,750	31st day and beyond

161. Stipulated Penalty Amounts – Plans, Reports, and other Deliverables.

The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other plans or deliverables pursuant to this Consent Decree, the Remedial SOW, the ICIAP, the Final OU 2 RD, the Final OU 3 RD, the ICIAP, the OU 2 Remedial Work Plan, the OU 3 Remedial Work Plan, the OU 2 Remedial O&M Plan, the OU 3

Remedial O&M Plan, the Restoration Plan, the Restoration Work Plan and any approved or modified reports, plans, specifications, schedules, and attachments under such work plans, or any other approved or modified reports, plans, specifications, schedules, and attachments under this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$1000	1st through 14th day
$ 1500	15th through 30th day
$ 3,500	31st day and beyond

162. In the event that EPA or the Trustees assume performance of a portion or all of the Settling Defendants' Remedial Action or Restoration Projects obligations pursuant to Paragraph 177 (Remedial Work Takeover), Settling Defendant shall be liable for a stipulated penalty in the amount of $1,500,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 112 (Funding for Remedial Work Takeover) and 178 (Remedial Work Takeover).

163. All stipulated penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XIV (Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 31st day after EPA's or the Trustees' receipt of such submission until the date that EPA or the Trustees notify Settling Defendant of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 5, the Regional Director of FWS and the Ohio EPA DERR ARCA Manager, as applicable, under Paragraph 156.b. or 157.a. of Section XXIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that

Settling Defendant's reply to EPA's or the Trustees' Statement of Position is received until the date that the Director of the Superfund Division, the Regional Director of FWS and the Ohio EPA DERR ARCA Manager as applicable, issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XXIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

164. Following EPA's or the Trustees' determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA or the Trustees may give Settling Defendant written notification of the same and describe the noncompliance. EPA and the Trustees may send Settling Defendant a written demand for the payment of the stipulated penalties. However, stipulated penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA or the Trustees have notified Settling Defendant of a violation.

165. All stipulated penalties accruing under this Section shall be due and payable within 30 days after Settling Defendant's receipt from EPA or the Trustees of a demand for payment of the stipulated penalties, unless Settling Defendant invokes the Dispute Resolution procedures under Section XXIV (Dispute Resolution) within the 30-day period. For any stipulated penalties due to the Trustees, Settling Defendant shall pay one-half of the stipulated penalty amount to the United States, and one-half of the stipulated penalty amount to the State as specified in Paragraphs 137.b and 138. All payments to the United States and the State under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Sections XIX (Payment of Response Costs) and XX (Payment of Assessment Costs).

166. Stipulated penalties shall continue to accrue as provided in Paragraph 163 during

any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA or the Trustees that is not appealed to this Court, accrued stipulated penalties determined to be owed shall be paid to EPA or the Trustees within 15 days after the agreement or the receipt of the decision or order by EPA or the Trustees, as applicable;

b. If the dispute is appealed to this Court and the EPA and the Trustees prevail in whole or in part, Settling Defendant shall pay all accrued stipulated penalties determined by the Court to be owed to EPA and the Trustees within 60 days after receipt of the Court's decision or order, except as provided in Paragraph 166.c.

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued stipulated penalties determined by the District Court to be owed to the United States and the State into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after 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 and the Trustees, or to Settling Defendant to the extent that it prevails.

167. If Settling Defendant fails to pay stipulated penalties when due, Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 165 until the date of payment; and (b) if Settling

Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 165 until the date of payment. If Settling Defendant fails to pay stipulated penalties and Interest when due, the United States and/or the State may institute proceedings to collect the penalties and Interest.

168. The payment of stipulated penalties and Interest, if any, shall not alter in any way Settling Defendant's obligation to complete the performance of the Work required under the Consent Decree.

169. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States and the State to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l); provided, however, that the United States and the State shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

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

XXV. COVENANTS BY PLAINTIFFS

A. Covenants by the United States

171. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under this Consent Decree, and except as specifically provided in Paragraphs 176 and 177 (United States' Pre- and Post-Certification Reservations), and 175 (Plaintiffs' General Reservations of Rights), the United States covenants not to sue or to take

administrative action against Settling Defendant: (1) pursuant to Sections 106 and 107(a) of CERCLA relating to the Site; and (2) for Natural Resource Damages pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607 (a)(4)(C), Section 311(f)(4) and (5) of the CWA, 33 U.S.C. §§ 1321(f)(4) and (5).

172. Except with respect to future liability, these covenants shall take effect upon the Effective Date of this Consent Decree. With respect to future liability, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 121 of Section XVII (Certification of Completion) and Certification of Completion of the Restoration Work Plan by the Trustees pursuant to Paragraph 128 of Section XVII (Certification of Completion). These covenants are conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

B. <u>Covenants by the State of Ohio</u>

173. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under this Consent Decree, and except as specifically provided in 175 (Plaintiffs' General Reservations of Rights) and Paragraphs 180 and 181 (Plaintiffs' Reservation of Rights Regarding Natural Resource Damages), the State covenants not to sue or to take administrative action against Settling Defendant for Natural Resource Damages pursuant to Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607 (a)(4)(C), Section 311(f)(4) and (5) of the CWA, 33 U.S.C. §§ 1321(f)(4) and (5), or state law.

174. Except with respect to future liability, these covenants shall take effect upon the Effective Date of this Consent Decree. With respect to future liability, these covenants shall take effect upon Certification of Completion of the Restoration Projects by the Trustees pursuant to Paragraph 128 of Section XVII (Certification of Completion). These covenants are conditioned

upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants extend only to Settling Defendant and do not extend to any other person.

XXVI. RESERVATION OF RIGHTS BY PLAINTIFFS

A. Plaintiffs' General Reservation of Rights

175. The covenants set forth in Section XXV (Covenants by Plaintiffs) do not pertain to any matters other than those expressly specified in Paragraphs 171 and 173, above. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to:

a. liability for failure by the Settling Defendant to meet a requirement of this Consent Decree;

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

c. liability based on ownership of the Site by Settling Defendant when such ownership commences after signature of this Consent Decree by Settling Defendant;

d. liability based on the operation of the Site by Settling Defendant when such operation commences after signature of this Consent Decree by Settling Defendant and does not arise solely from Settling Defendant's performance of the Work;

e. liability based on Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of hazardous substances at or in connection with the Site and/or Assessment Area, other than as required for implementation of the Work, or otherwise ordered by

EPA or the Trustees, after signature of this Consent Decree;

f. liability for any other natural resource damages that are not within the definition of Natural Resource Damages;

g. liability for any injury to, or destruction or loss of, Natural Resources resulting from implementation of the Restoration Projects;

h. liability for violations of federal or state law which occur during or after implementation of the Work;

i. liability of any person arising from any injury to Natural Resources resulting from any release or disposal of hazardous substances by Settling Defendant after the Lodging Date of this Consent Decree but not including any liability arising from further migration of previously released hazardous substance addressed under this Consent Decree; and

j. criminal liability.

B. **United States' Reservation of Rights as to the Remedial Action**

176. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order seeking to compel Settling Defendant to perform further response actions relating to the Site and/or pay the United States for additional costs of response if:

a. prior to Certification of Completion of the Remedial Action

i. conditions at the Site, previously unknown to EPA, are discovered; or

ii. information, previously unknown to EPA, is received, in whole or in part; and

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

177. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant to perform further response actions relating to the Site and/or pay the United States for additional costs of response if:

a. Subsequent to Certification of Completion of the Remedial Action:

i. conditions at the Site, previously unknown to EPA, are discovered; or

ii. information, previously unknown to EPA, is received, in whole or in part; and

b. EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment. For purposes of Paragraph 176 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ESD was signed and set forth in the OU 2 ROD, OU 3 ROD, OU 2 ESD and the administrative record supporting the OU 2 ROD, OU 3 ROD, and OU 2 ESD. For purposes of Paragraph 177 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the OU 2 ROD, OU 3 ROD, and OU 2 ESD, the administrative record

supporting the OU 2 ROD, OU 3 ROD, and OU 2 ESD, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

178. Remedial Work Takeover.

a. In the event EPA determines that Settling Defendant has (1) ceased implementation of any portion of the Remedial Work, or (2) is seriously or repeatedly deficient or late in its performance of the Remedial Work, or (3) is implementing the Remedial Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Remedial Work Takeover Notice") to Settling Defendant. Any Remedial Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendant a period of 20 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 20 day notice period specified in Paragraph 178.a, Settling Defendant has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Remedial Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Remedial Work as EPA deems necessary ("Remedial Work Takeover"). EPA will notify Settling Defendant in writing (which writing may be electronic) if EPA determines that implementation of a Remedial Work Takeover is warranted under this Paragraph 178.b. Funding of Remedial Work Takeover costs is addressed under Paragraph 112.

c. Settling Defendant may invoke the procedures set forth in Paragraph 155

(Record Review) to dispute EPA's implementation of a Remedial Work Takeover under Paragraph 178.b. However, notwithstanding Settling Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Remedial Work Takeover under Paragraph 178.b until the earlier of (1) the date that Settling Defendant remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Remedial Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 156 (Record Review) requiring EPA to terminate such Remedial Work Takeover.

179. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

C. <u>Plaintiffs' Reservation of Rights Regarding Natural Resource Damages</u>

180. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve the right to institute proceedings against Settling Defendant in this action or in a new action seeking recovery of Natural Resource Damages, including costs of damages assessments, based on: (i) conditions, including but not limited to the release of hazardous substances at or from the Assessment Area, previously unknown to the Trustees, that are discovered after the Lodging Date, and that cause or contribute to new or additional injuries to, losses of, or destruction of Natural Resources, or new or additional service losses ("Unknown Conditions"); or (ii) information concerning the release of hazardous substances or the resulting injuries to Natural Resources, previously unknown to the Trustees, that is received, in whole or in part, after the Lodging Date and that, together with any other relevant information, indicates that there are new or additional injuries to, losses of or destruction of Natural Resources, or new

or additional service losses ("New Information").

181. The failure of the Trustees to insist upon strict and prompt performance of the Restoration SOW and the Restoration Work Plan shall not operate as a waiver of any requirement of this Consent Decree or of the Trustees' right to insist on prompt compliance in the future with such provision, and shall not prevent a subsequent action by the Trustees to enforce such a provision.

XXVII. COVENANTS BY SETTLING DEFENDANT

182. Covenant Not to Sue by Settling Defendant. Subject to the reservations in Paragraph 183, Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State or their employees, representatives or contractors with respect to the Site and this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107, 111, 112, and 113 or any other provision of law;

b. any claims under CERCLA Section 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site and this Consent Decree, or any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

c. Any claims relating to NRD, including but not limited to claims for reimbursement of any payment for NRD, pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613; Section 311 of the CWA, 33 U.S.C. §§ 1321; or state law.

183. Except as provided in Paragraph 190 (Res Judicata and Other Defenses), the

covenants in this Section shall not apply if the United States and/or the State bring(s) a cause of action or issues an order pursuant to any of the reservations in Section XXVI (Reservation of Rights by Plaintiffs), other than in Paragraphs 175.a (claims for failure to meet a requirement of the Consent Decree), 175.h (violations of federal/state law during or after implementation of the Work), and 175.j (criminal liability), but only to the extent that Settling Defendant's claims arise from the same response action, response costs, or damages that the United States and/or the State is seeking pursuant to the applicable reservation.

184. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendant's plans, reports, other deliverable or activities.

185. 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).

XXVIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

186. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the Effective Date of the Consent Decree, to protection from

contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or other federal law, for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are: (1) all response actions taken or to be taken by the United States and the State and all response costs incurred or to be incurred by the United States, at or in connection with the Site; and (2) Natural Resource Damages, including all restoration actions taken or to be taken, and all Assessment Costs incurred or to be incurred at or in connection with the Site by the Trustees or any other person, provided, however, that if the United States and/or the State exercises rights against Settling Defendant under the reservations in Section XXVI (Reservation of Rights by Plaintiffs), other than in Paragraphs 175.a (claims for failure to meet a requirement of this Consent Decree), 175.h (violations of federal/state law during or after implementation of the Work required under the Consent Decree), or 175.j (criminal liability), the "matters addressed" in this Consent Decree will no longer include those response costs, response actions, restoration actions, or Assessment Costs that are within the scope of the exercised reservation.

187. Each of the Parties expressly reserves any and all rights including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613, defenses, claims, demands, and causes of action that 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. Nothing in this Consent Decree diminishes the right of the United States or the State, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2)-(3), to pursue any such person to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

188. Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States, with a copy to the State, in writing no

later than 60 days prior to the initiation of such suit or claim.

189. Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States, with a copy to the State, within ten days after service of the complaint on it. In addition, Settling Defendant shall notify the United States, with a copy to the State, within ten days after 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.

190. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States and/or the State for injunctive relief, recovery of response costs, natural resource damages, recovery of assessment costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States and/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 XXV (Covenants by Plaintiffs).

XXIX. ACCESS TO INFORMATION

191. Settling Defendant shall provide to EPA, Ohio EPA in its capacity as support agency with respect to the Remedial Work, and the Trustees, upon request, copies of all records, reports, documents and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of its 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 regarding the Remedial Work. Settling Defendant shall also make available to EPA, Ohio EPA in its capacity as support agency with respect to the Remedial Work, and the Trustees, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Remedial Work. Settling Defendant shall also make available to Plaintiffs its employees, agents, or representatives with knowledge of relevant facts concerning its compliance with this Consent Decree.

192. Business Confidential, Trade Secret and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the Records submitted to EPA 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 with respect to Records submitted to the EPA. Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. § 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. § 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendant.

b. Settling Defendant may assert trade secret claims covering part or all of the Records submitted to Ohio EPA under this Consent Decree to the extent permitted by and in accordance with Ohio statutes and rules. Records determined to be confidential by Ohio EPA will be afforded the protection specified in the applicable Ohio statutes and rules, subject to any order of a court

of competent jurisdiction. If no claim of confidentiality accompanies Records when they are submitted to Ohio EPA, or if Ohio EPA has notified Settling Defendant that the Records are not confidential under the standards of Ohio statutes and rules, the public may be given access to such Records without further notice to Settling Defendant. Settling Defendant shall segregate and clearly identify all Records submitted under this Settlement Agreement for which Settling Defendant asserts trade secret claims.

c. Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing Records, it shall provide the Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendant shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in Settling Defendant's favor.

d. Settling Defendant may assert certain Records submitted to Ohio EPA are privileged under the attorney-client privilege or any other privilege recognized by applicable Ohio statutes and rules. If Settling Defendant asserts such a privilege in lieu of providing certain Records, it shall provide Ohio EPA with the

following: a) the title of the Record; b) the date of the Record; c) the name and title of the author of the Record; d) the name and title of each addressee and recipient; e) a description of the contents of the Record; and f) the privilege asserted by Settling Defendant.

e. No Records created or generated pursuant to the requirements of this Consent Decree shall be withheld from the United States or the State on the grounds that they are privileged or confidential.

193. No claim of confidentiality or privilege shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or the portion of any other Record that evidences conditions at or around the Site.

XXX. RETENTION OF RECORDS

194. Until ten years after Settling Defendant's receipt of EPA's and the Trustees' notifications pursuant to Paragraphs 124 and 128 (Completion of the Work), Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability or the liability of any other person under CERCLA with respect to the Site. Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention

requirements shall apply regardless of any corporate retention policy to the contrary.

195. At the conclusion of this record retention period, Settling Defendant shall notify the United States and the State at least 90 days prior to the destruction of any such Records, and, upon request by the United States or the State, Settling Defendant shall deliver any such Records to the United States or the State, at the address provided by the United States or the State.

196. Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of 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 and/or Trustee requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXXI. NOTICES AND SUBMISSIONS

197. 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 in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOI, the State, and Settling Defendant, respectively.

As to the United States:

U.S. DOJ - By U.S. Postal Service:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division

U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-608

U.S. DOJ- By Overnight Courier:
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
ENRD Mailroom (Room 2121)
601 D Street NW
Re: DJ # 90-11-2-608
Washington, DC 20004

As to EPA:

Douglas Ballotti
Acting Director, Superfund Division
EPA Region 5 (S-6J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Dion Novak
EPA Project Manager
EPA Region 5 (S-6J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
novak.dion@epa.gov

Christopher Grubb
Assistant Regional Counsel
U.S. EPA Region 5 (C-14J)
77 W. Jackson Blvd.
Chicago, IL 60604
grubb.christopher@epa.gov

As to the U.S. EPA Regional Financial Management Officer:

Regional Financial Management Officer
Comptroller's Office
EPA Region 5 (MF-10J)
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

As to the Department of the Interior:

U.S. Department of the Interior

Natural Resource Damage Assessment and Restoration Program
Attn: Restoration Fund Manager
1849 C Street, NW
Mailstop 3548 MIB
Washington, DC 20240

Kimberly Gilmore
U.S. Department of the Interior\ Office of the Solicitor
Three Parkway Center, Suite 385
Pittsburgh, PA 15220

Daniel Everson
Field Supervisor
U.S. Fish & Wildlife Service
Ohio Ecological Services Field Office
4625 Morse Road, Suite 104
Columbus, OH 43230

As to the State of Ohio:

Sheila Abraham, Project Coordinator/ES-3
Ohio EPA, Division of Environmental Response & Revitalization
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087

Fiscal Officer
Division of Environmental Response & Revitalization
Ohio EPA
P.O. Box 1049
Columbus, Ohio 43216-1049

Chief
Environmental Enforcement Section
Ohio Attorney General's Office
30 East Broad Street - 25th Floor
Columbus, Ohio 43215

As to the Settling Defendant:

Dr. Rainer Domalski
President & CEO
Ruetgers Organics Corporation
2151 E. College Avenue
State College, PA 16801

Heidi B. Friedman
Thompson Hine LLP

3900 Key Center
127 Public Square
Cleveland, Ohio 44114

Settling Defendant's Project Coordinator
Dr. Rainer Domalski
President & CEO
Ruetgers Organics Corporation
2151 E. College Avenue
State College, PA 16801

XXXII. RETENTION OF JURISDICTION

198. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendant 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 XXIV (Dispute Resolution).

XXXIII. APPENDICES

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

APPENDIX A:	OU 2 RECORD OF DECISION
APPENDIX B:	OU 3 RECORD OF DECISION
APPENDIX C:	OU 2 EXPLANATION OF SIGNIFICANT DIFFERENCES
APPENDIX D:	NATURAL RESOURCE RESTORATION PLAN
APPENDIX E:	REMEDIAL STATEMENT OF WORK
APPENDIX F:	MAPS OF SITE AND ASSESSMENT AREA
APPENDIX G-1:	REMEDIAL PROPRIETARY CONTROLS FOR ROC-OWNED PROPERTY

APPENDIX G-2:	REMEDIAL PROPRIETARY CONTROLS FOR PROPERTY NOT OWNED BY ROC
APPENDIX H:	RESTORATION STATEMENT OF WORK
APPENDIX I:	CONSERVATION INSTRUMENTS TEMPLATES
APPENDIX J:	REMEDIAL PERFORMANCE GUARANTEE
APPENDIX K:	ALTERNATE PROPERTIES SCREENING CRITERIA

XXXIV. EFFECTIVE DATE

200. The Effective Date shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving this Consent Decree, the date such order is recorded on the Court docket; provided, however, that Settling Defendant shall be bound upon lodging of this Consent Decree to comply with the obligations specified in this Consent Decree as accruing upon the Lodging Date.

XXXV. COMMUNITY INVOLVEMENT

201. If requested by EPA, Settling Defendant shall participate in community involvement activities pursuant to the community involvement plan to be developed by EPA. EPA will determine the appropriate role for Settling Defendant under the Plan. Settling Defendant shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA or the State to explain activities at or relating to the Site. Costs incurred by the United States under this Section, including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XIX (Payment of Response Costs).

XXXVI. MODIFICATION

202. Except as provided in Paragraph 49 (Modification of Remedial SOW or Related Work Plans), material modifications to this Consent Decree, including the Remedial SOW or Restoration Work Plan, shall be in writing, signed by the United States, the State, and Settling Defendant, and shall be effective upon approval by the Court. Except as provided in Paragraph 49, non-material modifications to this Consent Decree, including the Remedial SOW and Restoration Work Plan, shall be in writing, shall be signed by duly authorized representatives of the United States and Settling Defendant, but shall not take effect until filed with the Court.

203. A modification to the Remedial SOW shall be considered material if it fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(B)(ii). Before providing its approval to any modification to the Remedial SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

204. A modification to the Restoration Work Plan shall be considered material if it fundamentally alters the basic features of the Restoration Work Plan. Before providing approval to any modification to the Restoration Work Plan, the Trustees will provide the public with a reasonable opportunity to review and comment on the proposed modification.

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

XXXVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

206. 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 28 C.F.R. § 50.7. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is

inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

207. The provisions of this Consent Decree are not severable. The Parties' consent hereto is conditioned upon the entry of the Consent Decree in its entirety without modification, addition, or deletion except as agreed to by the Parties. 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.

XXXVIII. SIGNATORIES/SERVICE

208. The undersigned representatives of Settling Defendant, the State and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice each 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.

209. Settling Defendant 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 or State has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

210. 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 Defendant agrees 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. Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXIX. FINAL JUDGMENT

211. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

212. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States, the State, and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 22nd DAY OF December, 2016.

/s/ *Benita Y. Pearson*

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, et al.,v. Rütgers Organics Corporation, relating to the Nease Chemical Superfund Site.

FOR THE UNITED STATES OF AMERICA

s/ John C. Cruden
JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

s/ Arnold S. Rosenthal
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, et al.,v. Rütgers Organics Corporation, relating to the Nease Chemical Superfund Site.

CAROLE S. RENDONE
United States Attorney
Assistant United States Attorney
Northern District of Ohio
U.S. Department of Justice

s/ Steven J. Paffilas
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, et al.,v. Rütgers Organics Corporation, relating to the Nease Chemical Superfund Site.

s/ Douglas Ballotti (per consent of parties)
DOUGLAS BALLOTTI
Acting Director, Superfund Division Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

s/ Mark J. Palermo (per consent of parties)
MARK J. PALERMO
Associate Regional Counsel
s/ Christopher Grubb (per consent of parties)
CHRISTOPHER GRUBB
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 5
Office of Regional Counsel (C-14J)
77 West Jackson Boulevard
Chicago, IL 60604

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, et al.,v. Rütgers Organics Corporation, relating to the Nease Chemical Superfund Site.

FOR THE STATE OF OHIO

MICHAEL DEWINE
OHIO ATTORNEY GENERAL

s/ Timothy J. Kern (per consent of parties)
TIMOTHY J. KERN
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States, et al.,v. Rütgers Organics Corporation, relating to the Nease Chemical Superfund Site.

FOR RUTGERS ORGANICS CORPORATION

s/ Rainer Domalski (per consent of parties)

Name (print):
RAINER DOMALSKI

Title:

President and CEO

Address:

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State College, PA 16801

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

Name (print):
HEIDI FRIEDMAN

Title:

Partner, Thompson Hine

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