

EPA has received a \$100,000 payment from the Glen Cove Industrial Development Agency pursuant to a 1999 Prospective Purchaser Agreement, and expects shortly to receive a \$325,000 payment pursuant to a consent decree with the Glen Cove Development Company and Village Green Realty at Garvies Point, Inc. (following the entry of that consent decree by the court). For purposes of settlement with the recipients of this letter, we are prepared at this time to allocate one-third of the aforementioned \$425,000 (i.e., \$141,666.67) toward our past costs, leaving a balance of \$13,304,464.56 in unreimbursed past costs (as of the dates set forth in footnote 2 above).³

Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), demand is hereby made for payment of \$13,304,464.56, plus any interest recoverable under law and any additional Site costs paid subsequent to the dates referenced in footnote 2. Pursuant to Section 107(a) of CERCLA, interest on EPA's past costs of \$13,304,464.56 will accrue from the date of this letter, and interest on any additional costs will accrue from the date of expenditure.

The RA consent decree would take into account EPA's Superfund Reform relating to orphan shares, described in an EPA Headquarters guidance document dated June 3, 1996, entitled "Interim Guidance on Orphan Share Compensation for Settlers of Remedial Design/Remedial Action and Non-Time Critical Removals." Under that reform, when EPA enters into future RA settlements, EPA intends to compensate the settling PRPs for a portion of the shares of responsibility which are specifically attributable to known PRPs that are insolvent or defunct, if any. Such compensation will take the form of forgiveness of all or a portion of EPA's past costs at the given site and/or reduction of liability for EPA's future oversight costs.

In applying the interim orphan share guidance to this Site, we have determined that a small orphan share appears to exist in that five generator parties who contributed hazardous substances to the Site appear to be defunct or insolvent.⁴ Although we have

³ The remainder of the \$425,000 - i.e., \$283,333.33 - will be placed in a Superfund "Special Account" relating to the Site. EPA may make this money available to parties that settle for the RA, if appropriate.

⁴ The five generator parties which we believe to be defunct or insolvent are Delta Carbide, H.R. Taylor Company, Hogen Industries, Powder-Tech, and Tungsten Alloy Manufacturing Company.

not conducted an allocation of liability for this Site, we believe that under an allocation, these five parties would be assigned a small share. This is because of the significant number of other PRPs at the Site, as well as the fact that the available Site records appear to indicate that these five parties sent a relatively small amount of material to the Site. Solely for purposes of applying the orphan share reform, we estimate that the combined allocable share of these five parties is about 2.5%. The amount of orphan share compensation we can offer at this Site, under the 1996 guidance referenced above, is then calculated by multiplying 2.5% by the sum of: (a) EPA's outstanding past costs (\$13,304,464.56); (b) our estimate of the amount of our future remedial action oversight costs (\$500,000)⁵; and (c) the ROD's estimate of the total present worth cost of the remedy (\$28,000,000). This works out to be \$1,045,111.61 (2.5% x \$41,804,464.56). In the RA consent decree, we would be willing to waive that amount of our past costs.

Please note that our offer to waive \$1,045,111.61 of our past costs is contingent upon you entering into an RA consent decree with EPA for the Site. If an RA consent decree is not finalized and signed, EPA will pursue recovery of all of its past costs. Please also note that our offer to waive some of our past costs as part of an RA settlement should not be construed as a finding of legal divisibility and will not be admissible in evidence in any proceeding.

Within sixty (60) calendar days from the date of your receipt of this letter, please send your written response to this special notice letter, including your good faith proposal, as discussed above, and your response to EPA's cost recovery demand to:

Edward Als
Remedial Project Manager
U.S. Environmental Protection Agency Region II
Emergency and Remedial Response Division
290 Broadway, 20th Floor
New York, New York 10007-1866.

and

⁵We make this estimate purely for purposes of calculating the orphan share compensation. By necessity, the \$500,000 figure is only a rough estimate; it is not binding on EPA.

James Doyle
U.S. Environmental Protection Agency Region II
Office of Regional Counsel
290 Broadway, 17th Floor
New York, New York 10007-1866.

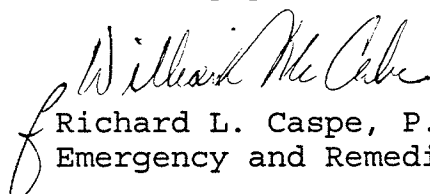
In order that a settlement may be reached and finalized within 120 days of your receipt of this letter, it is imperative that any discussions concerning the performance of the RA and the reimbursement of EPA's past costs begin as early as possible. If you are interested in formulating a settlement with the United States regarding the selected RA at the Site and EPA's past costs, please notify EPA in writing of your intention to enter into formal negotiations with EPA, and send such notification to the above-named EPA representatives **within twenty-one (21) calendar days from the date of your receipt of this letter.** In addition, EPA is prepared to meet with you to discuss this matter on April 12, 2000 in EPA's offices in New York City. Please contact Mr. Doyle at (212) 637-3165 to confirm your attendance at this meeting.

As you are aware, EPA has provided the services of an Alternative Dispute Resolution specialist to convene the PRPs in order to promote their internal settlement discussions. The specialist, Mr. Robert Fisher, of RESOLVE, Inc., may be contacted at (202) 965-6207.

If your technical representatives have questions regarding the remedy, Site conditions, or the like, they may contact Mr. Als of my staff at (212) 637-4272. Otherwise, please direct all questions regarding this letter and the enclosed consent decree to Mr. Doyle at (212) 637-3165.

We appreciate your immediate attention to this matter.

Sincerely yours,


Richard L. Caspe, P.E., Director
Emergency and Remedial Response Division

Enclosures

cc: Michael O'Toole, Jr., NYSDEC
Charles Sullivan, Jr., Esq., NYSDEC

Mark Barash, Esq., USDOJ
Andrew Raddant, USDOJ
Tony Giedt, Esq., NOAA
Lisa Rosman, NOAA
Peter Kautsky, USDOJ
Linda Marino, U.S. Attorney's Office, EDNY
Robert Fisher, RESOLVE

LIST OF ADDRESSES

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 subsidiary of Fansteel, Inc.
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General Services Administration
 U.S. Department of Commerce
 U.S. Department of the Treasury
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 Assistant United States Attorney
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 Edelman & Dicker
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**COST HISTORICAL SUMMARY FOR SITE 02-4L
LI TUNGSTEN, GLEN COVE, NY**

Categories	Package #-1	Package #-2	Totals
Payroll			
Regional	\$359,564.01	\$179,496.83	\$539,060.84
Headquarters	464.09	2,725.29	\$3,189.38
Travel			
Regional	40,565.55	7,549.48	\$48,115.03
Headquarters	269.76	180.35	\$450.11
Contracts/Purchase Orders	8,455,291.26	3,242,824.36	\$11,698,115.62
State Cooperative Agreements	45,000.00	0.00	45,000.00
Indirect Costs	810,221.75	301,978.50	\$1,112,200.25
Total	\$9,711,376.42	\$3,734,754.81	\$13,446,131.23

IMA:lmn

DRAFT #1 - 3/17/00
SUBJECT TO FURTHER REVIEW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA,

Plaintiff,

- against -

[INSERT NAMES OF PARTIES],

Defendants.

- - - - -X

I. BACKGROUND

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

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Li Tungsten Superfund Site ("Site") in the City of Glen Cove, Nassau County, New York, together with accrued interest; and (2) performance of response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New

York (the "State") on March __, 2000 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.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration on _____, 2000 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agencies ("Settling Federal Agencies") do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 14, 1992. 57 Fed. Reg. 47180.

G. After contamination was discovered at the Site, EPA entered into an Administrative Order on Consent (Index No. II CERCLA-90215) with the Li Tungsten facility property owners on July 21, 1989 to conduct a removal action at the Li Tungsten facility. In addition, EPA performed further removal activities at the Site from 1995 to 1998. EPA's removal activities involved, among other things, the extraction and decontamination of numerous tanks and the demolition of several buildings at the Site.

H. In 1993, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the NCP. EPA completed the RI for the Site in May of 1998. A draft FS report for the Site was prepared by EPA in December of 1998, and it was finalized in July of 1999.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 28, 1999, in *Newsday*, a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of

the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 1999, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. Based on the information presently available to EPA, EPA believes that the Work (as defined below) will be properly and promptly conducted by Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

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

M. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and

will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

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

III. PARTIES BOUND

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

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

IV. DEFINITIONS

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

"Captain's Cove Property" shall mean the parcel approximately 23 acres in size known as the Captain's Cove Condominium Inactive Hazardous Waste Disposal Site, located approximately 1,000 feet west of the Li Tungsten Property on Garvies Point Road, as depicted on the map attached hereto as Appendix A. The Captain's Cove Property is designated as Site #1-30-032 on the New York State Registry of Inactive Hazardous Waste Disposal Sites.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

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

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

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the 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 Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls, including, but not limited to, the amount of just compensation), XV, and Paragraph 87 of Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on the Past Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from March __, 2000 **[date of special notice letter]** to the date of entry of this Consent Decree.

"Interim Response Costs" shall mean: (a) all payroll and indirect costs that the United States paid in connection with the Site between September 12, 1999 and the effective date of this Consent Decree; (b) all other response costs that the United States paid in connection with the Site between September 17, 1999 and the effective date of this Consent Decree; (c) all costs, including direct and indirect costs, incurred by the United States with respect to the Site prior to the effective

date of this Consent Decree but paid after that date; and (d) all Interest that accrues on the aforementioned costs.

"Interest," shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Li Tungsten Property" shall mean the former Li Tungsten Facility property, encompassing approximately 26 acres, located at 63 Herhill Road in the City of Glen Cove, as depicted on the map attached hereto as Appendix A.

"Municipal Sewage Sludge" shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

"Municipal Solid Waste" shall mean household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain small

amounts of other wastes as typically may be accepted in landfills regulated under Subtitle D of the Resource Conservation and Recovery Act ("RCRA").

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

"NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

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

"Parties" shall mean the United States and Settling Defendants.

"Past Response Costs" shall mean: (a) all payroll and indirect costs that the United States paid at or in connection with the Site through September 11, 1999; (b) all other response costs that the United States paid at or in connection with the Site through September 16, 1999; and (c) all Interest, if any, that has accrued on the aforementioned costs through March __, 2000 **[one day prior to SNL]**.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the "Remedial Actions Objectives" Section of

the ROD, the "Compliance With ARARs" portion of the "Statutory Determinations" Section of the ROD, and Table 15 of the ROD.

"Plaintiff" shall mean the United States.

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

"RD Order" shall mean Administrative Order on Consent, Index Number CERCLA 02-2000-2013, issued by EPA on March __, 2000 regarding the performance of the Remedial Design of the remedy.

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Li Tungsten Site signed on September 30, 1999, by the Regional Administrator, EPA Region II, or her delegate, and all attachments thereto. The ROD is attached as Appendix B.

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

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

"Remedial Design" shall mean those activities to be undertaken by the Respondents to EPA's RD Order to develop the

final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Reports" shall mean those documents developed pursuant to Paragraph 26 of the RD Order and approved by EPA, and any amendments thereto.

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

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

"Settling Federal Agencies" shall mean those departments, agencies, and instrumentalities of the United States identified in Appendix D, which are resolving any claims which have been or could be asserted against them with regard to this Site as provided in this Consent Decree.

"Site" shall mean (1) the Li Tungsten Property, and (2) any portion of the Captain's Cove Property where radioactive ore residuals exist.

"State" shall mean the State of New York.

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

"Supervising Contractor" shall mean the principal contractor

retained by Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, Settling Federal Agencies, and any federal natural resources trustee.

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

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree (including the securing and implementation of institutional controls), except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the implementation of response actions at the Site by Settling Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants and the claims of Settling Defendants which

have been or could have been asserted against the United States with regard to this Site as provided in this Consent Decree.

6. Commitments by Settling Defendants and Settling Federal Agencies

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree. Settling Federal Agencies shall reimburse the EPA Hazardous Substance Superfund for Past Response Costs and Future Response Costs, as provided in this Consent Decree.

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

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and

regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

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

b. Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

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

VI. PERFORMANCE OF THE WORK BY SETTling DEFENDANTS

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Settling Defendants' Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Settling Defendants, as the "practice of engineering" is defined at Section 7201 of the New York State Education Law, must comply with all applicable New York State legal requirements regarding the practice of professional engineering within the State of New York, including, but not limited to, all applicable requirements of the New York State Education Law and Articles 15 and 15-A of the Business Corporation Law. Within 10 days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter Settling Defendants propose to change a Supervising

Contractor, Settling Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors (which does not include the contractor previously disapproved by EPA), including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

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

10. Remedial Design.

The Remedial Design of the remedy selected in the ROD shall be performed pursuant to the RD Order, and upon approval by EPA of the Remedial Design Reports under the RD Order, the Remedial Design Reports shall be deemed incorporated into and enforceable under this Consent Decree.

11. Remedial Action.

a. Within 30 days after EPA approves the final Remedial Design Reports (submitted pursuant to the RD Order), Settling Defendants shall submit a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan") to EPA and the State. The Remedial Action Work Plan shall provide for the implementation of the approved Remedial Design Reports, the construction of the remedy set forth in the ROD, and achievement of the Performance Standards, all in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed pursuant to the RD Order, in accordance with the final Remedial Design Reports, and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State an updated Health and Safety Plan for field activities required by the 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.

b. The Remedial Action Work Plan shall include the following: (1) an updated schedule for implementation of all Remedial Action tasks identified in the final Remedial Design Reports; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) tentative formulation of the Remedial Action team; and (6) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall identify the initial formulation of Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence physical

Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

12. Settling Defendants shall continue to implement the Remedial Action until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 13 and Paragraphs 49 and 50 only, the "scope of the remedy selected in the ROD" relates to two media at the Site, soils and groundwater. As for soils, the scope of the remedy is to prevent or minimize exposure to contaminants of concern through inhalation, direct contact or ingestion, and to prevent or minimize cross-media impacts from contaminants of concern in soil and sediments to underlying groundwater. To achieve these objectives, the remedy

requires (a) the excavation of soils and sediments contaminated above cleanup levels, (b) the separation of radionuclide-contaminated soil from non-radionuclide contaminated soil but which is contaminated with heavy metals, to the extent it can be accomplished in a cost-effective manner, and the appropriate off-Site disposal of all radionuclide and metals-contaminated soils at appropriately licensed facilities, including such disposal of radioactive waste currently contained in the Dickson Warehouse (located at the Li Tungsten Property), (c) the demolition of buildings at the Li Tungsten Property, (d) the collection and proper off-site disposal of contaminated surface water from Parcels B and C of the Li Tungsten Property, and (e) the establishment of institutional controls governing the future use of the Site. As for groundwater, the scope of the remedy is to prevent or minimize ingestion, dermal contact and inhalation of metals-contaminated groundwater on lower Parcel C and on Parcel A that is above State and Federal Maximum Contaminant Levels, as well as to restore groundwater quality to levels which meet State and Federal standards. To satisfy these objectives, the remedy requires a long-term groundwater monitoring program to assess the recovery of the Upper Glacial Aquifer after the soil remedy is implemented.

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph,

they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 68 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

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

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

15. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the

total volume of all such shipments will not exceed 10 cubic yards.

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

b. The identity of the receiving facility (or facilities) and state(s) will be determined by Settling Defendants following the award of the contract for Remedial Action. Settling Defendants shall provide the information required by Paragraph 16.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

16. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every

five years as required by Section 121(c) of CERCLA and any applicable regulations.

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

18. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 83 or Paragraph 84 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 83 or Paragraph 84 of Section XXI (Covenants by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is

not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 68 (record review).

20. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Region II Contract Lab Program Organics Data Review and Preliminary Review (SOP #HW-6, Revision 11)," dated June 1996, or the latest revision, and the "Evaluation of Metals Data for the Contract Laboratory Program (SOP #HW-2, Revision 11)," dated January 1992 or the latest revision, or EPA-approved equivalent procedures. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree,

Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" (Revision No. 11, 1992) and the "Contract Lab Program Statement of Work for Organic Analysis" (Revision No. 9, 1994), and any amendments made thereto during the course of the implementation of this Consent Decree. Settling Defendants shall ensure that all laboratories they use

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

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

23. Settling Defendants shall submit to EPA 4 copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree with the next monthly report due to EPA pursuant to Paragraph 30, below, but in no instance shall it be more than 30 days after the date when those results or data become available to Settling Defendants, unless EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of Settling Defendants, such Settling Defendants shall:

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

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

near the Site;

vi. Implementing the Work pursuant to the conditions set forth in Paragraph 87 of this Consent Decree;

vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

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

ix. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, not permitting the Site to be used for residential purposes, and not allowing the use of groundwater at the Site for potable purposes until the

groundwater has been restored to the target cleanup levels as provided in the ROD; and

c. if EPA requests, execute and record in the Recorder's Office or Registry of Deeds or other appropriate land records office of Nassau County, New York, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, those activities listed in Paragraph 25(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

i. A draft easement that is enforceable under the laws of the State of New York, free and clear of all

prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Recorder's Office or Registry of Deeds or other appropriate office of Nassau County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

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

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related

to this Consent Decree, including, but not limited to, those activities listed in Paragraph 25(a) of this Consent Decree;

b. if EPA so requests, an agreement, enforceable by Settling Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 25(b) of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. if EPA so requests, the execution and recordation in the Recorder's Office or Registry of Deeds or other appropriate land records office of Nassau County, New York, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, those activities listed in Paragraph 25(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf

of EPA, and its representatives, (ii) the State and its representatives, (iii) Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of EPA's request, Settling Defendants shall submit to EPA for review and approval with respect to such property:

i. A draft easement that is enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Recorder's Office or Registry of Deeds or other appropriate office of Nassau County. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

27. For purposes of Paragraph 26 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use

restrictions, and/or restrictive easements. If any access agreement required by Paragraph 26 a. of this Consent Decree is not obtained within 45 days of the date of entry of this Consent Decree, if any land/water use restriction agreement required by Paragraph 26 b. is not obtained within 45 days of the date of EPA's request therefor, or if any access easements or restrictive easements required by Paragraph 26 c. are not submitted to EPA in draft form within 45 days of the date of EPA's request therefor, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 26 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all direct and indirect costs incurred by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid.

28. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected

in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

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

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks, and provide other information relating to the progress

of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the 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 Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendants pursuant to Paragraph 50.b. of Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

31. Settling Defendants shall notify 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.

32. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant

to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Chief of the New York Remediation Branch of the Emergency and Remedial Response Division, EPA Region II. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within 20 days of the onset of an event of the type referred to in the preceding Paragraph, Settling Defendants shall furnish to Plaintiff a written report, signed by Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

34. Settling Defendants shall submit all plans, reports, and data required by Section VI, above, the SOW, the EPA-approved Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in Section VI, above, the SOW and such approved plans. Settling Defendants shall

simultaneously submit copies of all such plans, reports and data to the State, in accordance with the requirements of Section XXVI, below.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an

acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

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

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendants shall proceed, at the direction of EPA, to take any action

required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

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

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, or if Settling Defendants

do not challenge EPA's disapproval or modification by invoking the dispute resolution procedures set forth in Section XIX, stipulated penalties shall accrue for such violation, as provided in Section XX, from the date on which the initial submission was originally required.

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

XII. PROJECT COORDINATORS

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

aspects of the Work. Settling Defendants' Project Coordinator shall not be an attorney for any of Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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

44. Settling Defendants' Project Coordinator shall be available to meet with EPA at EPA's request.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$ 28 million in one or more of the following forms:

- (a) A surety bond guaranteeing performance of the Work;
- (b) One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- (c) A trust fund;
- (d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Settling Defendants; or
- (e) A demonstration that one or more of Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

46. If Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45(d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part

264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Section. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

47. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 45 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

48. Settling Defendants may change the form of financial

assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Remedial Action

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The

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

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants

shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

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

50. Completion of the Work

a. Within 90 days after Settling Defendants conclude that all phases of the Work, have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If,

after the pre-certification inspection, Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or Settling Defendants' Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities or require Settling Defendants to

submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

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

XV. EMERGENCY RESPONSE

51. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 52, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the

Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendants shall notify the Chief of the Removal Action Branch, EPA Region II, at (732)321-6658. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

52. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants by Plaintiff).

XVI. REIMBURSEMENT OF RESPONSE COSTS

53. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund \$ _____ in reimbursement of Past Response Costs by Fedwire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 1999V00190, EPA Region II and Site/Spill ID #024L, and DOJ case number 90-11-3-06561/2. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of New York following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

54. a. As soon as reasonably practicable after the effective date of this Consent Decree, the United States, on behalf of Settling Federal Agencies, shall pay to the EPA Hazardous Substance Superfund \$ _____, in reimbursement of Past

Response Costs. The payment procedures set forth in Paragraph 53 above shall also apply to the payment(s) made under this Subparagraph.

b. The United States, on behalf of Settling Federal Agencies, shall reimburse the EPA Hazardous Substance Superfund for __% of all Future Response Costs, not inconsistent with the National Contingency Plan. EPA will periodically send the Settling Federal Agencies billings indicating the amount of the Future Response Costs and the amount required to be paid. The billings will be accompanied by a printout of cost data in EPA's financial management system. As soon as reasonably practicable after the receipt of each such billing, the United States, on behalf of the Settling Federal Agencies, shall make payment to the EPA Hazardous Substance Superfund of the costs that are the subject of the billing. The payment procedures set forth in Paragraph 55 below shall also apply to the payments to be made under this Subparagraph.

c. If the payments to the EPA Hazardous Substances Superfund required by Subparagraphs a. and b. of this Paragraph are not made as soon as reasonably practicable, the appropriate EPA Regional Branch Chief may raise any issues relating to payment to the appropriate DOJ Assistant Section Chief for the Environmental Defense Section. In any event, if the payment required by Subparagraph a. above is not made within 120 days

after the effective date of this Consent Decree, or if payment required by Subparagraph b. above is not made within 120 days after receipt of a bill from EPA, EPA and DOJ have agreed to resolve the issue within 30 days in accordance with a letter agreement dated December 28, 1998.

d. As soon as reasonably practicable after the effective date of this Consent Decree, the United States, on behalf of the Settling Federal Agencies, shall pay to Settling Defendants \$ _____ in reimbursement of Settling Defendants' future response costs, in the form of a check or checks made payable to _____ and sent to _____, or by Electronic Funds Transfer in accordance with instructions provided by Settling Defendants.

e. In the event that the payment required by Paragraph 54.a. is not made within 30 days of the effective date of this Consent Decree, Interest on the unpaid balance shall accrue and be paid, commencing on the effective date of this Consent Decree and accruing through the date of the payment. In the event that the payment required by Paragraph 54.b. is not made within 30 days of the date of the given bill, Interest on the unpaid balance shall accrue and be paid, commencing on the date of the bill and accruing through the date of the payment.

f. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of Settling Federal

Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

55. Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for ___% of all Future Response Costs not inconsistent with the National Contingency Plan **[This percentage when added to the percentage in Subparagraph 54.b. must add to 100%]**. The United States will periodically send Settling Defendants billings indicating the amount of the Future Response Costs and the amount required to be paid. The billings will be accompanied by a printout of cost data in EPA's financial management system. Settling Defendants shall make all payments within 30 days of the date of each bill requiring payment, except as otherwise provided in Paragraph 56. Settling Defendants shall make all payments via EFT to Mellon Bank, Pittsburgh, Pennsylvania. To make each such payment by EFT, Settling Defendants shall provide the following information to their bank:

- i. Amount of payment
- ii. Title of Mellon Bank account to receive the payment: **EPA**
- iii. Account code for Mellon Bank account receiving the payment: **9108544**
- iv. Mellon Bank ABA Routing Number: **043000261**

v. Names of Settling Defendants

vi. Case number: **90-11-3-06561/2**

vii. Site/spill identifier: **024L**

Along with this information, Settling Defendants shall instruct their bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank. To ensure that Settling Defendants' payment is properly recorded, Settling Defendants shall send a letter to the United States within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the case number, and each Settling Defendant's name and address. Such letter shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to:

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

56. Settling Defendants may contest payment of any Future Response Costs under Paragraph 55 if they determine that the United States has made a mathematical error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of the date of the bill and must be sent to the United States pursuant to Section XXVI (Notices and

Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 55. Simultaneously, Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), 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 Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, Settling Defendants shall pay the sums due, with accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 55. If Settling Defendants prevail concerning any

aspect of the contested costs, Settling Defendants shall pay that portion of the costs for which they did not prevail, plus associated accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 55; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

57. In the event that the payments required by Paragraph 53 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 55 are not made within 30 days of the date of each bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue 30 days after the effective date of this Consent Decree. 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 Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section.

Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 55.

XVII. INDEMNIFICATION AND INSURANCE

58. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States (with the exception of Settling Federal Agencies) and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Settling Defendants agree to reimburse the United States (with the exception of Settling Federal Agencies) for 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

Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 58.a., and shall consult with Settling Defendants prior to settling such claim.

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

to the Site, including, but not limited to, claims on account of construction delays.

60. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 49.b. of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of at least two million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described

above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

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

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

orally notify EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Chief of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region II, within 48 hours of when Settling Defendants first knew that the event might cause a delay. Within 5 days thereafter, Settling Defendants shall provide an explanation to EPA, in writing, describing 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 Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which

Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

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

64. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice under the preceding Paragraph. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay

or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 61 and 62, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

65. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

66. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be

considered to have arisen when one party sends the other parties a written Notice of Dispute.

67. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States 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 Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 68 or Paragraph 69.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 68 or 69. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 68 or 69, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 68 and 69.

68. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions or the appropriateness of the remedy selected in the ROD.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position,

including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Emergency and Remedial Response Division ("ERRD"), EPA Region II, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 68.a. This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 68.c. and d.

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

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the ERRD Director is arbitrary and capricious or otherwise not in accordance with law. Judicial

review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 68.a.

69. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 67, the ERRD Director, EPA Region II, will issue a final decision resolving the dispute. The ERRD Director's decision shall be binding on Settling Defendants unless, within 10 days of receipt of the decision, Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

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

70. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in Paragraph 79. 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 Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

71. Settling Defendants shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 for failure to comply with the requirements of this Consent Decree as specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include performance and completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA

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

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

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 4,000	1st through 14th day
\$ 8,000	15th through 30th day
\$15,000	31st day and beyond

b. Subparagraph a. of this Paragraph applies to the following requirements:

(i) submission and, if necessary, revision and resubmission of any plan, report, or other deliverable required by Section VI (Performance of the Work by Settling Defendants) or by the SOW or by any plan which is prepared pursuant to Section VI or the SOW and approved by EPA;

(ii) any deadline imposed by Section VI (Performance of the Work by Settling Defendants) or by the SOW or by any plan which is prepared pursuant to Section VI or the SOW and approved by EPA;

(iii) obligations imposed by Section XV (Emergency Response);

- (iv) obligations imposed by Section IX (Access and Institutional Controls);
- (v) implementation of the Remedial Action in accordance with the ROD, the approved Remedial Design Reports, the SOW, and this Consent Decree;
- (vi) modification of the SOW or related work plans pursuant to Paragraph 13, and implementation of the work called for by such modifications in accordance with the modified SOW or work plan;
- (vii) performance of studies and investigations and further response actions pursuant to Section VII, and
- (viii) any other requirement of this Consent Decree that applies to Settling Defendants and that is not identified in Subparagraph 73.b.

73. a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements identified in Subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 1,500	1st through 14th day
\$ 3,000	15th through 30th day
\$ 5,000	31st day and beyond

b. Subparagraph a. of this Paragraph applies to the following requirements:

- (i) permitting split or duplicate samples, quality assurance, and other requirements pursuant to Section VIII (Quality Assurance, Sampling, and Data Analysis);
- (ii) designation of Settling Defendants' Project Coordinator as required by Section XII (Project Coordinators);
- (iii) obligations imposed by Section XIII (Assurance of Ability to Complete Work);
- (iv) timely submission and, if necessary, revision and resubmission of the name, title and qualifications of the proposed Supervising Contractor pursuant to Section VI;
- (v) certification of completion requirements set forth in Section XIV, including both the requirement to make the certification and the requirement that the certification be truthful;
- (vi) timely notification regarding any delay or anticipated delay, consistent with Paragraph 62;
- (vii) indemnification and insurance requirements set forth in Section XVII;
- (viii) reporting requirements set forth in Section X;
- (ix) timely submission of written notification of

any off-site shipment of Waste Material from the Site to an out-of-state waste management facility pursuant to Paragraph 15;

(x) submission of documents and other information in accordance with Section XXIV, and

(xi) payments required by Section XVI

(Reimbursement of Response Costs).

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 of Section XXI (Covenants by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of \$2,800,000.

75. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions) during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Emergency and Remedial Response Division, EPA Region II, under Paragraph 68.b. or 69.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling

Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

77. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the date of EPA's demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States

under this Section shall be made by EFT, consistent with Paragraph 55 above.

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

79. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute resolution period, but need not be paid until the following:

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

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below.

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

the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

80. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 77.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

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

XXI. COVENANTS BY PLAINTIFF

82. a. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 83, 84, and 86 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, these covenants shall take effect upon the receipt by EPA of the payments required by Paragraph 53 of Section XVI (Reimbursement of Response Costs). With respect to future liability, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 49.b. of Section XIV (Certification of Completion). These covenants are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants extend only to Settling Defendants and do not extend to any other person.

b. In consideration of the payments that will be made by Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 83, 84 and 86 of this Section, EPA covenants not to take administrative action

against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, EPA's covenant shall take effect upon the receipt of the payments required by Subparagraph 54.a. and d. of Section XVI (Reimbursement of Response Costs). With respect to future liability, EPA's covenant shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 49.b of Section XIV (Certification of Completion). EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenant extends only to Settling Federal Agencies and does not extend to any other person.

83. United States' Pre-certification reservations.

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

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

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

84. United States' Post-certification reservations.

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

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

and 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.

85. For purposes of Paragraph 83, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 84, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

86. General reservations of rights. The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraph 82. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and the federal natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with

respect to all other matters, including but not limited to, the following:

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

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

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

(4) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action;

(7) liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the SOW or Related Work Plans); and

(8) liability for the performance of all remaining requirements of the RD Order.

87. Work Takeover. In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 68, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs).

88. 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.

XXII. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

89. a. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 90, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes

of action against the United States with respect to the Site or this Consent Decree, including, but not limited to:

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

2. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

3. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities, or implementation of any institutional controls.

b. Covenant by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law with respect to the Site or this Consent Decree. This covenant does not preclude demands for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than

pursuant to this Consent Decree) as lead or support agency under the NCP.

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

(a) claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; and

(b) contribution claims against Settling Federal Agencies in the event any claim is asserted by the United States against

Settling Defendants under the authority of or under Paragraphs 83, 84, 86(2)-(4) or 86(7) and (8) of Section XXII (Covenants by Plaintiff), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against Settling Defendants.

91. 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).

92. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if

(a) any materials contributed by such person to the Site constituting Municipal Solid Waste ("MSW") or Municipal Sewage Sludge ("MSS") did not exceed 0.2% of the total volume of waste at the Site; and

(b) any materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS,

did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

93. Except as provided in Paragraph 92, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraph 92, each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter,

transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

94. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants and Settling Federal Agencies are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. For purposes of the preceding sentence, the "matters addressed" in this Consent Decree are recovery of Past Response Costs and Future Response Costs as defined herein and performance of and payment for the Work to be performed pursuant to this Consent Decree.

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

96. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary

Judgment and within 10 days of receipt of any order from a court setting a case for trial.

97. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States 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 set forth in Section XXI (Covenants by Plaintiff).

XXIV. ACCESS TO INFORMATION

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

or representatives with knowledge of relevant facts concerning the performance of the Work.

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

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

addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

XXV. RETENTION OF RECORDS

101. Until 10 years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.b. of Section XIV (Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.b. of Section XIV (Completion of the Work), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records,

and information of whatever kind, nature or description relating to the performance of the Work.

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

103. a. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded,

destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

b. The United States acknowledges that each Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies, and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XXVI. NOTICES AND SUBMISSIONS

104. 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 herein. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United

States, EPA, Settling Federal Agencies, and Settling Defendants, respectively.

As to the United States or EPA:

3 copies: Chief, New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, NY 10007-1866
Attention: Li Tungsten Site Remedial Project Manager

One copy of all required written communications other than work plans and technical reports shall also be sent to each of the following individuals:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866
Attention: Li Tungsten Site Attorney

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # 90-11-3-06561/2

Chief, Environmental Defense Section
United States Department of Justice
Environment and Natural Resources Division
P.O. Box 23986
Washington D.C. 20026-3986

Re: DJ # _____

As to the State:

When submitting to EPA any written communication required hereunder, Settling Defendants shall simultaneously submit two

copies of that communication (unless the given document is a plan or report, in which case six copies shall be submitted) to:

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
Room 222
50 Wolf Road
Albany, NY 12233-7010

Attention: Li Tungsten Site Project Manager

As to Settling Defendants:

[Name]
Settling Defendants' Project Coordinator
[Address]

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

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

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

"Appendix B" is the ROD.

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

"Appendix D" is the complete list of Settling Federal Agencies.

"Appendix E" is the SOW.

XXX. COMMUNITY RELATIONS

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

XXXI. MODIFICATION

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

writing.

110. Except as provided in Paragraph 13 ("Modification of the SOW or related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA (after providing the State with a reasonable opportunity to review and comment on the proposed modification) and Settling Defendants.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

112. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the

entry of this Consent Decree without further notice.

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

XXXIII. SIGNATORIES/SERVICE

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

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

116. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the

formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the
matter of United States v. _____, relating
to the Li Tungsten Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

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Assistant Attorney General
Environment and Natural Resources
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U.S. Department of Justice
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PETER KAUTSKY
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Environmental Enforcement Section
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Date: _____

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By: _____
LINDA M. MARINO
Assistant United States Attorney

JEANNE M. FOX
Regional Administrator, Region II
U.S. Environmental Protection
Agency
290 Broadway
New York, NY 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the
matter of United States v. _____, relating
to the Li Tungsten Superfund Site.

FOR _____ COMPANY, INC.

Date: _____

[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]

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

Name: _____

[Please Type]

Title: _____

Address: _____

Tel. Number: _____