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Decree

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

BOOTH OIL CO., INC.
BROWNING-FERRIS INDUSTRIES OF NEW YORK, INC.
BROWNING-FERRIS INDUSTRIES OF OHIO, INC.
GOODYEAR TIRE & RUBBER CO.
INDUSTRIAL HOLDINGS CORPORATION
MODERN DISPOSAL SERVICES, INC.
NIAGARA COUNTY
NIAGARA FALLS, CITY OF
NORTH TONAWANDA, CITY OF
OCCIDENTAL CHEMICAL CORP.
OLIN CORPORATION
WHEATFIELD, TOWN OF

Defendants.

CIVIL ACTION NO.

LODGED: 12/6/94
ENTERED: 2/3/95

CONSENT DECREE

CASE: US vs Booth Oil Et AL

FILED 2/3/95 IN WEST. DISTRICT OF NY

DOCKET #: 94-CV-849

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CONSENT DECREE

I. BACKGROUND

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

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

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New York (the "State") on March 9, 1994 of EPA's negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the National Oceanic and Atmospheric Administration ("NOAA"), the U.S. Department of the Interior ("DOI"), and the Commissioner of NYSDEC on March 9, 1994 of negotiations with potentially responsible parties regarding the

release of hazardous substances that may have resulted in injury to the natural resources under their 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.

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 September 1, 1983, 48 Fed. Reg. 40658;

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, some of the Settling Defendants (the "AOC Respondents") commenced in March 1989, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site under an Administrative Order on Consent (Index No. II CERCLA-90209) (the "RI/FS Order") pursuant to the NCP;

H. The AOC Respondents completed a Remedial Investigation ("RI") Report on January 28, 1993, and completed a Feasibility Study ("FS") Report in July 1993;

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 24, 1993 in a major local newspaper of general circulation. EPA provided an opportunity

for written and oral comments from the public on the proposed plan. 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 24, 1993, 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 will be properly and promptly conducted by the 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 the 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 the 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 (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this

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

IV. DEFINITIONS

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

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

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

"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, VIII, X (including, but not limited to, attorneys fees and the amount of just compensation), XVI, and Paragraph 81 of Section XXII. Future Response Costs shall also include all costs, including direct and indirect costs, paid by the United States in connection with the Site between July 1, 1994 and the effective date of this Consent Decree and all interest on the Past Response Costs from March 9, 1994 to the date of payment of the Past Response Costs.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan

promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

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

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

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

"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 the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United States incurred and paid with regard to the Site prior to July 1, 1994.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in the ROD or Section II of the SOW.

"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).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 24, 1993 by the Regional Administrator, EPA Region II, and all attachments thereto.

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

"Remedial Action Work Plan" shall mean the document submitted by the Settling Defendants pursuant to Paragraph 12.a of this Consent Decree and described more fully in Paragraph 12.b.

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

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

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

"Settling Defendants" shall mean those Parties identified in Appendices D (Non-Owner Settling Defendants) and E (Owner Settling Defendant).

"Site" shall mean the Niagara County Refuse Disposal Superfund site, encompassing approximately 50 acres, located along the eastern border of the Town of Wheatfield, New York and the western border of the City of North Tonawanda, Niagara County, New York and depicted generally on the map attached as Appendix C.

"State" shall mean the State of New York.

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

"Subparagraph" shall mean a portion of a Paragraph of this Consent Decree identified by a lower case letter.

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

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

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

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

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

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States 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 §300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting 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.

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall record a certified copy of this Consent Decree with the Niagara County Clerk's Office, State of New York. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of the Owner Settling Defendant with respect to the provision of access under Section X (Access) and the implementation of institutional controls (referred to in Paragraph 11 d.(3)) shall be binding upon such Settling Defendant and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall record at the Niagara County Clerk's Office a notice of obligation to provide access under Section X (Access) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. The Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance,

including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree, including their obligations to provide or secure access pursuant to Section X, shall continue to be met by the Settling Defendants. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Defendants to comply with the Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. 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 (Additional Response Actions), VIII (EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of a qualified contractor (hereinafter, the "Supervising Contractor"), the selection of which shall be subject to disapproval by EPA. 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 the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) hereof.

11. Remedial Design.

a. Within 60 calendar days after EPA's issuance of an authorization to proceed pursuant to the preceding Paragraph, Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon its approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. The Remedial Design Work Plan shall include, among other things, a Health and Safety Plan for field design activities 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. In addition to the Health and Safety Plan specified above, the Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, the following plans and schedules: (1) a Sampling, Analysis, and Monitoring Plan; (2) a Quality Assurance Project Plan (QAPP) in accordance with Section IX (Quality Assurance, Sampling and Data Analysis); (3) a description of additional remedial design tasks; (4) a Plan for Obtaining Access and Other Approvals; and (5) a Remedial Design Schedule and Draft Schedule for Remedial Construction and O&M. The requirements of these plans and schedules are detailed in the SOW.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the

State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The "Remedial Design Investigation Report" shall summarize the pre-design tasks identified in the SOW and report the resultant findings. The preliminary and final design submittals ("Preliminary Remedial Design Report" and "Final Remedial Design Report") shall include a discussion of the design criteria and objectives and the plans and specifications that have been developed commensurate with 50% completion and 100% completion, respectively. The design analysis shall provide the rationale for the plans and specifications, including supporting calculations and documentation of how the plans and specifications will meet the requirements of the ROD. The design reports shall also include the following: (1) a technical specification for photographic documentation of the Remedial Construction Work; (2) a discussion of the manner in which the Remedial Action will achieve the Performance Standards; (3) a plan for establishing institutional controls; and (4) a draft

Schedule for Remedial Construction activities and a preliminary
Schedule for O&M activities and Post-remediation Monitoring
activities.

e. Other requirements of the Preliminary and Final Remedial Design Reports are provided in the SOW. Among other things, the final design submittal shall include the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) an updated Health and Safety and Contingency Plan for Remedial Construction; and (5) a schedule for implementing the Final Remedial Design Report. The CQAPP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

12. Remedial Action.

a. Within 90 days after the approval of the final design submittal, Settling Defendants shall award a contract for Remedial Action. Within 60 days of the award of the Remedial Action contract, Settling Defendants shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by

EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree.

b. The Remedial Action Work Plan shall include any request for modification of the approved Final Remedial Design Report, if applicable. The Remedial Action Work Plan shall also include a Site Management Plan, which, at a minimum, shall include the following: (1) identification of the Remedial Action Project Team; (2) the schedule for completion of the Remedial Action; (3) methodology for implementation of the Construction Quality Assurance Plan; (4) methodology for implementation of the Operation and Maintenance Plan; (5) procedures and plans for the decontamination of equipment and the disposal of contaminated materials; (6) methods for satisfying permitting requirements; (7) discussion of the methods by which construction operations shall proceed; and (8) discussion of quality control. The requirements of these plans and schedules are detailed in the SOW.

c. Upon EPA's written approval of the Remedial Action Work Plan, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan in accordance with the approved schedules contained in the Final Remedial Design Report and Remedial Action Work Plan. The 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 XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendants shall not commence physical on-site activities at the Site prior to approval of the Remedial Action Work Plan.

d. No later than 90 days prior to the scheduled completion date of the Remedial Construction, Settling Defendants shall submit to EPA an O&M Manual, in accordance with the SOW.

e. At least 14 days prior to the completion of construction of the Remedial Action, Settling Defendants shall participate in a pre-final inspection, in accordance with the SOW.

13. The Work performed by the Settling Defendants pursuant to this Consent Decree shall include achievement of the Performance Standards. Within 90 days after Settling Defendants conclude that the Performance Standards have been attained, Settling Defendants shall conduct a pre-certification inspection in accordance with the SOW. Within 30 days of EPA's concurrence that the Performance Standards have been attained, Settling Defendants shall submit to EPA a Draft Remedial Action Report in accordance with the SOW. Upon EPA's certification of completion of the Remedial Construction or upon notice from EPA following the final inspection, Settling Defendants shall perform O&M activities in accordance with the EPA-approved O&M Manual, which includes the O&M Schedule.

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 EPA-approved Work Plans will achieve the Performance Standards. Settling Defendants' compliance with the work requirements shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable 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. The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another

facility within the same state, or to a facility in another state.

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

VII. ADDITIONAL RESPONSE ACTIONS

16. In the event that EPA determines or the Settling Defendants propose that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided to the Project Coordinator for the other Parties.

17. Within sixty (60) days of receipt of notice from EPA pursuant to the preceding Paragraph that additional response actions are necessary (or such longer time as may be specified by EPA), Settling Defendants shall submit for approval by EPA, after reasonable opportunity for review and comment by the State, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 10 and 11. Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval), Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein.

18. Any additional response actions that Settling Defendants propose are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State, and, if authorized by EPA, shall be completed by Settling Defendants in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XII (Submissions Requiring Agency Approval).

19. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Section XX (Dispute Resolution) of this Consent Decree.

VIII. EPA PERIODIC REVIEW

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

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

Administrator, EPA Region II, or his/her delegate will determine in writing whether further response actions are appropriate.

22. If the Regional Administrator, EPA Region II, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the Remedial Action is not protective of human health and the environment, the Settling Defendants shall undertake any further response actions EPA has determined are appropriate, unless their liability for such further response actions is barred by the Covenant Not to Sue set forth in Section XXII. Settling Defendants shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA. The Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the remedial action is not protective of human health and the environment, as arbitrary and capricious or otherwise not in accordance with law, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Defendant's liability for the further response actions requested is reserved in Paragraphs 77, 78, or 80 or otherwise not barred by the Covenant Not to Sue set forth in Section XXII.

IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

23. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80), as revised; "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Defendants shall ensure that EPA 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" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this 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.

24. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendants shall notify EPA not less than fourteen (14) 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 will allow the Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

25. Settling Defendants shall submit to EPA 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 within seven

days of the date when those results or data become available to Settling Defendants unless EPA agrees otherwise.

26. 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.

X. ACCESS

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

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV; and

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

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

of Response Costs), for all costs incurred by the United States in obtaining access.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulation.

XI. 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 EPA's community relations plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 47.b of Section XV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

31. The 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 Response and Prevention 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 described in the preceding Paragraph, Settling Defendants shall furnish to Plaintiff a written report, signed by the Settling Defendant's Project Coordinator, setting forth the event 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 Design Work Plan, the EPA-approved Remedial Action Work Plan, and each other approved plan to EPA in accordance with the schedules set forth in Section VI, above, and such approved plan. Settling Defendants shall simultaneously submit copies of each such plan, report and data to the State, in accordance with the requirements of Section XXVII, 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 the Settling Defendants.

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

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 the Settling Defendants modify the submission; or (e) any combination of the above.

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 XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the first submittal of a given plan, report or other item (as opposed to a resubmittal of a given item) to cure the deficiencies pursuant to Paragraph 36(c), and that initial submittal has a material defect, EPA retains its right to seek stipulated penalties for that deficient submittal, pursuant to Section XXI.

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

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

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, or if Settling Defendants do not challenge EPA's disapproval or modification by invoking the dispute resolution procedures set forth in Section XX, stipulated penalties shall accrue for such violation pursuant to Section XXI 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.

XIII. 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. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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 ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent

Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

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

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of lodging of this Consent Decree, Settling Defendants shall establish and maintain financial security initially in the amount of twenty million dollars, and thereafter, Settling Defendants may seek EPA's approval to maintain financial security in a lesser amount, in one of the following forms:

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

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

(c) A trust fund;

(d) An unconditional written guarantee in favor of the United States to perform the Work, issued by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or

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

46. If the 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.

XV. CERTIFICATION OF COMPLETION

47. 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, the 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 XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity 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 to complete the Remedial Action or achieve the Performance Standards. EPA will set forth in the notice a schedule for

performance of such activities or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully 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 XXII (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

48. Completion of the Work

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), 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, the

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 the Settling Defendants' Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity 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 to complete the Work. EPA will set forth in the notice a schedule for performance of such activities or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling

Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XVI. EMERGENCY RESPONSE

49. 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 the following Paragraph, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the Response and Prevention Branch of the Emergency and Remedial Response Division, EPA Region II. 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 XVII (Reimbursement of Response Costs).

50. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS

51. Within 30 days of the effective date of this Consent Decree, Settling Defendants shall pay to the United States Seventy-Two Thousand Four Hundred and Fourteen Dollars (\$72,414) in reimbursement of Past Response Costs, by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID #0224, and DOJ Case Number 90-11-2-948. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendants upon execution of the Consent Decree. Payments by EFT must be received at the U.S. Department of Justice lockbox bank by 4:00 P.M. (Eastern Time) to be credited on that day.

52. Settling Defendants shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States will periodically send Settling Defendants billings for

such costs. Those billings will be accompanied by a printout of cost data in EPA's financial management system and by a calculation of EPA's indirect costs. Settling Defendants shall make all payments within 30 days of the date of each bill requiring payment, except as otherwise provided in the following Paragraph. The Settling Defendants shall make all payments required by this Paragraph in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing U.S.A.O. file number _____, the EPA Region and Site/Spill ID # 0224 and DOJ Case Number 90-11-2-948. The Settling Defendants shall forward the certified check(s) to:

EPA - Region 2
Attention: Superfund Accounting
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions).

53. Settling Defendants may contest payment of any Future Response Costs under the preceding Paragraph 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 XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to

the United States in the manner described in the preceding Paragraph. Simultaneously, the 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. The Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the 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 the preceding Paragraph. If the Settling Defendants prevail concerning any aspect of the contested costs, the 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 the preceding Paragraph; any balance of the escrow account shall be disbursed to Settling Defendants. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

54. Interest shall accrue on the Past Response Costs from March 9, 1994 to the date of payment of the Past Response Costs. Such interest falls within the category of Future Response Costs and will be included in a billing sent by the United States to Settling Defendants pursuant to Paragraph 51, above. In the event that the payments required by Paragraph 51 are not made within 30 days of the date of each bill, Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). The interest on Future Response Costs shall begin to accrue on the date of each bill sent to Settling Defendants pursuant to Paragraph 51 above. Interest shall accrue at the rate specified through the date of the 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.

XVIII. INDEMNIFICATION AND INSURANCE

55. 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 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, acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs incurred by the United States 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 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 the Settling Defendants nor any

such contractor shall be considered an agent of the United States.

56. 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.

57. No later than 15 days before commencing any field 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 47.b. of Section XV (Certification of Completion) comprehensive general liability insurance and automobile insurance with limits of ten million dollars, combined single limit, or such lesser amount as may be approved by EPA, naming as additional insured the United States. 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.

XIX. FORCE MAJEURE

58. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants or of any entity controlled by Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any

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

59. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Chief of the New York/Caribbean Superfund Branch 2, Emergency and Remedial Response Division, EPA Region II, within 48 hours of when Settling Defendants first knew or should have known that the event might cause a delay. Within 5 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the

environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event. Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

60. 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 the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

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

of EPA's notice 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 58 and 59, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

62. 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 the Settling Defendants that have not been disputed in accordance with this Section.

63. 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.

64. 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 the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 65 or 66.

b. Within fourteen (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 will include a statement as to whether formal dispute resolution should proceed under Paragraph 65 or 66.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under

Paragraph 65 or 66, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 65 or 66.

65. 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; (2) the adequacy of the response actions performed pursuant to this Consent Decree; and (3) the appropriateness of additional response actions required pursuant to Section VII of this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding 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 Paragraph and the preceding Paragraph. 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 Subparagraph a. of this Paragraph. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Subparagraph c. and d. of this Paragraph.

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

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the 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 Subparagraph a. of this Paragraph.

66. 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. Contemporaneously with or following the submission of EPA's Statement of Position pursuant to Paragraph 64, the ERRD Director, EPA Region II, will issue a final decision resolving the dispute. The ERRD Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

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 provisions of law.

67. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree not directly in dispute, unless EPA 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 73. Notwithstanding the

stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties); except that if EPA, through delay not caused in whole or in part by any other person, takes longer than fourteen (14) days after receipt of Settling Defendant's Statement of Position pursuant to Subparagraph a. of Paragraph 64., above, to submit EPA's Statement of Position pursuant to Subparagraph b., of Paragraph 64., above, or if EPA takes longer than twenty (20) days after submission of EPA's Statement of Position to issue EPA's final decision pursuant to Subparagraph b. of Paragraph 65., above, or Subparagraph a. of Paragraph 66., above, then Settling Defendants shall not be obligated to pay those stipulated penalties which accrue from the date of conclusion of the aforementioned fourteen (14) day period through the date of EPA's issuance of its Statement of Position, or from the date of conclusion of the aforementioned twenty (20) day period through the date of EPA's issuance of its final decision.

XXI. STIPULATED PENALTIES

68. Settling Defendants shall be liable for stipulated penalties in the amounts set forth below to the United States for failure to comply with any requirements of this Consent Decree, unless excused under Section XIX (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 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.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 14th day
\$5,000	15th through 30th day
\$8,500	31st day and beyond

69. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

70. 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 and a description of such noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

71. All penalties owed to the United States under this Section shall be due and payable 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 XX (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

EPA - Region II
Attention: Superfund Accounting
P.O. Box 360188M
Pittsburgh, Pennsylvania 15251

and shall reference the U.S.A.O. file number _____, the EPA Region and Site/Spill ID # 0224, and DOJ Case Number 90-11-2-948. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

72. 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.

73. Penalties shall continue to accrue as provided in Paragraph 69 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, Settling Defendants shall pay

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

c. If this Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties owing to the United States into an interest-bearing escrow account within 60 days of the date 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 the date 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.

74. 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 71 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

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.

75. No payments made under this Section shall be tax deductible for Federal tax purposes.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

76. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 77, 78, and 80 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 not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 51 of Section XVII (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 47.b of Section XV (Certification of Completion). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

77. United States' Pre-certification reservations.

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

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

and 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.

78. United States' Post-certification reservations.

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

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

and 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.

79. For purposes of Paragraph 77, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 78, the information and the conditions known to EPA shall include only that information and those conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, and any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

80. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 76. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

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

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

(3) liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction or loss;

(4) liability for response costs that have been or may be incurred by the federal natural resource trustees;

(5) criminal liability;

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

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

Response Costs that Settling Defendants shall pay pursuant to Section XVII (Reimbursement of Response Costs).

82. 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.

XXIII. COVENANTS BY SETTling DEFENDANTS

83. 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, 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), 111, 112, 113 or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site including any claims against the United States' contractors based on activities occurring prior to the lodging of this Consent Decree. However, the Settling Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on any future negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendants plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent

Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

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

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

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

87. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States 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 an order from a court setting a case for trial.

88. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery 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 not to sue set forth in Section XXII (Covenants Not to Sue by Plaintiff).

XXV. ACCESS TO INFORMATION

89. 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, cha

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, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

90. 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. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the 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.

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

XXVI. RETENTION OF RECORDS

92. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 47.b of Section XV (Certification of 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 the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 47.b of Section XV (Certification of Completion), Settling

Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

93. 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. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the 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.

94. Each Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information

relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXVII. NOTICES AND SUBMISSIONS

95. 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, and the Settling Defendants, respectively.

A. As to the United States or EPA:

3 copies: Chief, New York/Caribbean Superfund Branch 2
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 747
New York, NY 10278

Attention: Michael Negrelli, Superfund Site Remedial
Project Manager

One copy of all required written communications other than work plans, design documents 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
26 Federal Plaza, Room 437
New York, NY 10278

Attention: Michael A. Mintzer, Superfund 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 Case Number 90-11-2-948.

B. 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 seven copies shall be submitted) to:

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

Attention: Steve Scharf

C. As to the Settling Defendants:

To the Settling Defendants' Project Coordinator at the name and address designated pursuant to Paragraph 42.

XXVIII. EFFECTIVE DATE

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

XXIX. RETENTION OF JURISDICTION

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

XXX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

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

"Appendix D" is the complete list of the Non-Owner Settling Defendants.

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

XXXI. COMMUNITY RELATIONS

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

XXXII. MODIFICATION

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

101. 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 the Settling Defendants.

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

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

103. 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.

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

XXXIV. SIGNATORIES/SERVICE

105. 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.

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

107. 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 _____, 19__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Booth Oil Company, et al., relating to the Niagara County Refuse Disposal District Superfund Site.

FOR THE UNITED STATES OF AMERICA

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

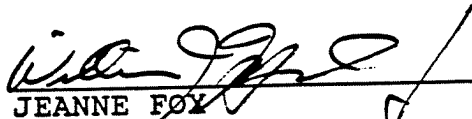
Anna Swerdel
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Date: _____


Patrick H. Nemoyer
United States Attorney
Western District of New York

Martin J. Littlefield
Assistant United States Attorney
Western District of New York
U.S. Department of Justice
138 Delaware Avenue
Buffalo, New York 14202

Date: _____


JEANNE FOX
Regional Administrator, Region II
U.S. Environmental Protection
Agency
26 Federal Plaza
New York, NY 10278

Date: September 29, 1984


MICHAEL A. MINTZER
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region II
26 Federal Plaza
New York, NY 10278

Date: 9/28/84

77

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Booth Oil Company et al., relating to the Niagara County Refuse Disposal District Superfund Site.

FOR: Booth Oil Co., Inc.

Date September 27, 1994

Name: Lonsdale Schofield, Vice-President

Title: _____

Address: 80 Katherine St., Buffalo, NY, 14205.

Tel. Number: 716-855-2212

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

Name: _____

Title: _____

Address: 80 Katherine St., Buffalo, NY 14205

Tel. Number: 716-855-2212

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Booth Oil Company et al., relating to the Niagara County Refuse Disposal District Superfund Site.

Browning-Ferris Industries of
FOR: New York, Inc.

Date: August 16, 1994

David O. Ledbetter

Name: David O. Ledbetter
[Please Type]
Title: Counsel
Address: 951 E. Byrd St., Richmond, Va
Tel. Number: 804-788-8364 23219-4

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

Name: David O. Ledbetter
[Please Type]
Title: Counsel
Address: 951 E. Byrd St., Richmond, Va. 23219-4074
Tel. Number: 804-788-8364

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Booth Oil Company et al., relating to the Niagara County Refuse Disposal District Superfund Site.

FOR: Browning-Ferris Industries of Ohio, Inc.

Date: August 16, 1994

David O. Ledbetter

Name: David O. Ledbetter
[Please Type]

Title: Counsel

Address: 951 E. Byrd St., Richmond, Va.

Tel. Number: 804-788-8364 23219-40

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

Name: David O. Ledbetter
[Please Type]

Title: Counsel

Address: 951 E. Byrd St., Richmond, Va. 23219-4074

Tel. Number: 804-788-8364

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
United States v. Booth Oil Company, et al., relating to the Niagara County Refuse
Disposal District Superfund Site.

FOR: THE GOODYEAR TIRE & RUBBER COMPANY

Date: 8/3/94

By: 

R M Hehir
Vice President
1144 East Market Street
Akron, OH 44316-0001
(216) 796-4602

Attest: 

Assistant Secretary

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

CT Corporation System
633 Broadway
New York, NY 10019
(212) 246-5070

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Booth Oil Company et al., relating to the Niagara County Refuse Disposal District Superfund Site.

FOR: Industrial Holdings Corporation

Date: 9/21/94

Charles H. Bowman

Name: The Standard Oil Company
by Charles H. Bowman, President
[Please Type]
Title: Attorney-in-fact for Industrial Holdings
Address: 200 Public Square Corporation
Tel. Number: Cleveland, OH 44114-2375
216/586-2325

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

Name: David L. Bell
[Please Type]
Title: Managing Counsel
Address: 200 Public Square, Cleveland, OH 44114-2375
Tel. Number: 216/586-6390

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Booth Oil Company et al., relating to the Niagara County Refuse Disposal District Superfund Site.

FOR: MODERN DISPOSAL SERVICES, INC.

Date: September 21, 1994

x Steve Washuta

Name: Steve Washuta

[Please Type]

Title: President

Address: 4746 Model City Road, Model City, NY

Tel. Number: 716-754-8226

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

Name:

[Please Type]

Title: _____

Address: _____

Tel. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
United States v. Booth Oil Company et al., relating to the Niagara County
Refuse Disposal District Superfund Site.

Dated: 9/15/94

COUNTY OF NIAGARA, NEW YORK

BY



JOHN TYLEC, CHAIRMAN

NIAGARA COUNTY LEGISLATURE

175 Hawley Street
Lockport, New York 14094
(716) 439-7000

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

John C. Garas, Esq.
Hurwitz & Fine, P.C.
1300 Liberty Building
Buffalo, New York 14202
(716) 849-8900

APPENDIX E

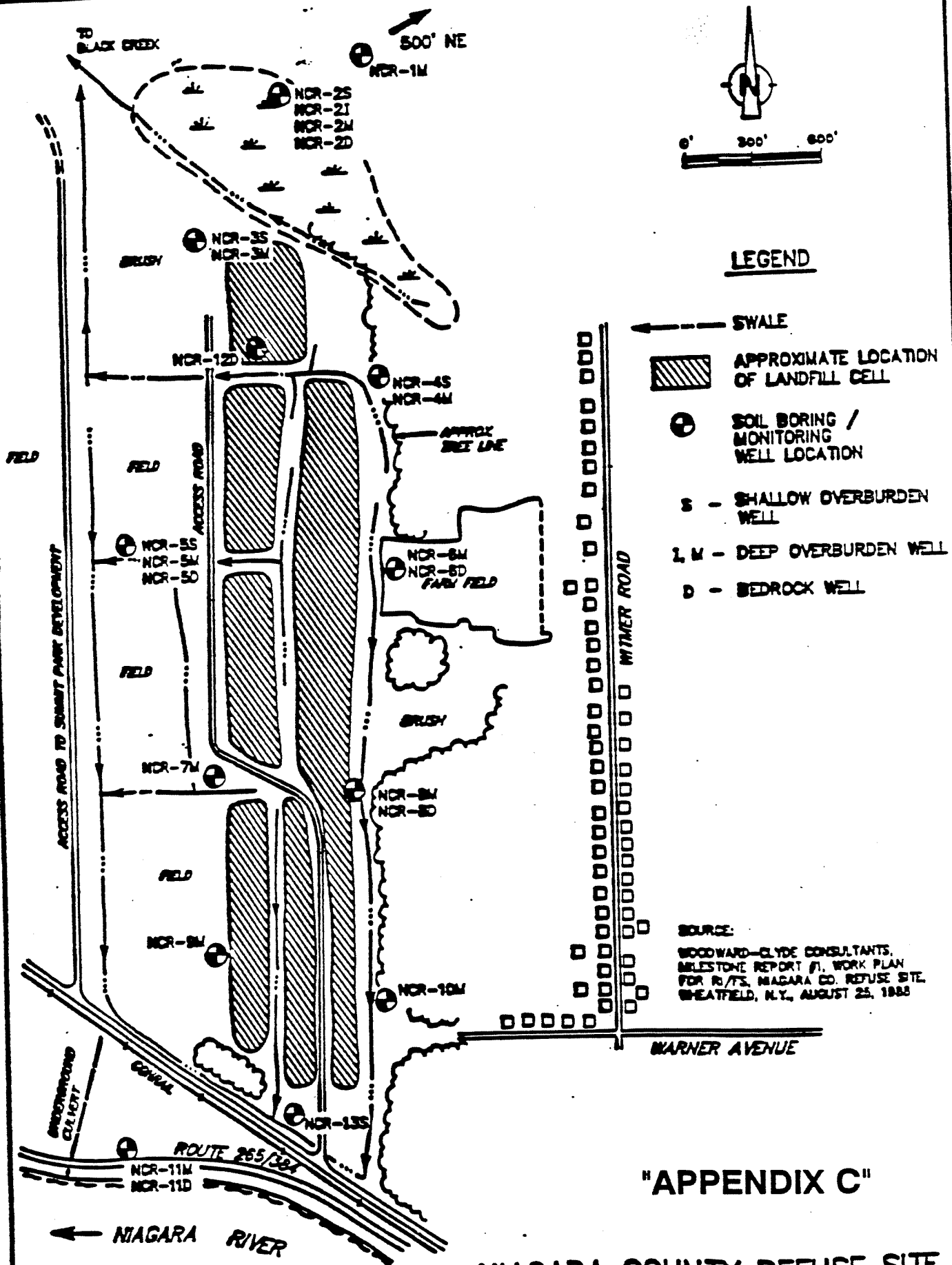
Owner Settling Defendant

WHEATFIELD, TOWN OF

APPENDIX D

Non-Owner Settling Defendants

BOOTH OIL COMPANY
BROWNING-FERRIS INDUSTRIES OF NEW YORK, INC.
BROWNING-FERRIS INDUSTRIES OF OHIO, INC.
GOODYEAR TIRE & RUBBER CO.
INDUSTRIAL HOLDINGS CORPORATION
MODERN DISPOSAL SERVICES, INC.
NIAGARA COUNTY
NIAGARA FALLS, CITY OF
NORTH TONAWANDA, CITY OF
OCCIDENTAL CHEMICAL CORP.
OLIN CORPORATION



"APPENDIX C"

NIAGARA COUNTY REFUSE SITE
 Wheatfield, N.Y.

Settling Defendants shall submit to the EPA the "as-built" engineering drawings for all facilities constructed pursuant to this Consent Decree. The as-built drawings shall be signed and stamped by a professional engineer licensed in the State of New York.

- D. The EPA will either approve the Draft Remedial Action Report, thus making it the Final Remedial Action Report, require modifications of it in accordance with the procedures set forth in Section XV of the Consent Decree, and/or require corrective measures to fully and properly implement the Remedial Action. If the EPA requires corrective measures to the Remedial Action, Settling Defendants shall undertake the corrective measures according to a schedule approved by the EPA. Such corrective measures, if any, shall be followed by an inspection, further notification(s) by the EPA, and submittal by Settling Defendants of a Revised Draft Remedial Action Report to the EPA, in accordance with paragraph C, above. Upon approval by the EPA, the Revised Draft Remedial Action Report shall then become the Final Remedial Action Report.
- E. The EPA will determine whether the Remedial Action or any portion(s) thereof have been completed in accordance with the standards, specifications and reports required by this Consent Decree.

XII. OPERATION AND MAINTENANCE

Upon the EPA's certification of completion of the remedial construction or upon notice from the EPA following the final inspection, Settling Defendants shall perform O&M activities in accordance with the approved O&M Manual, which includes the O&M schedule.

"as built" plans and specifications shall be provided showing all such modifications. The reasons for all such modifications shall be described in detail. The as-built drawings shall be signed and stamped by a professional engineer.

b. Photographs:

This section should include photographs and/or slides that record the progress of remedial construction including, at a minimum, the important features of the Site prior to the commencement of the Work, remedial construction activities for the various tasks, and the appearance of the Site after the remedial construction has been completed.

4. Final Inspection

This section documents the pre-final and final inspections conducted by the Settling Defendants and the EPA at the completion of construction. This section should include a brief description of the deficient construction items (punchlist) reported and resolved during the pre-final and final inspections and a list of attendees at the inspection(s). The final resolution of all deficient items should be documented.

5. Certification

This section shall include a certification statement, signed by a responsible corporate official of one or more of the Settling Defendants or by the Settling Defendants' Project Coordinator, which states the following:

"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."

6. Operation and Maintenance

This section should discuss the highlights of the operation and maintenance plan, as well as provide insight to potential problems/concerns.

7. As-Built Drawings

shall be signed by a qualified licensed professional engineer meeting any and all requirements of applicable Federal and State laws, and shall certify that the remedial construction work has been completed in full satisfaction of the requirements of this Consent Decree, this Statement of Work, and all plans, specifications, schedules, reports and other items developed hereunder.

2. Performance Standards and Construction Quality Control

This section should include documentation that the Performance Standards have been met in accordance with this Consent Decree. Each Performance Standard should be addressed by providing the standard, the maximum level permissible, the results of field sampling, the basis for determining that the standard was met, and the location and frequency of the tests.

This section of the Remedial Action Report should also provide a summary of the implementation of the construction quality control plan and provide an assurance that the remedial action was completed in compliance with the requirements of the EPA-approved Final Remedial Design Report, the ROD and the Consent Decree.

3. Construction Activities

The Construction Activities section should include the following:

a. Narrative description:

This section should include a narrative description of the construction activities undertaken for the remedial action including appropriate time frames. Quantities excavated, cleanup levels achieved, and materials and/or equipment used should be addressed in this section and may be presented in tabular format in support of the narrative. The name and the specific role of the major design and remedial action contractors should be provided. A verification that all equipment used during the remedial construction has been decontaminated, dismantled and removed from the Site should also be provided. If the Selected Remedial Alternative as implemented differs in any way from the approved plans and specifications of the Final Design Report, such modifications shall be reported, and

set forth in this Consent Decree.

XI. PRE-FINAL INSPECTION, REMEDIAL ACTION REPORT, NOTICE OF COMPLETION

- A. At least fourteen (14) calendar days prior to the completion of construction of the Remedial Action, Settling Defendants and their contractor(s) shall be available to accompany EPA personnel or their representatives on a pre-final inspection. The pre-final inspection shall consist of a walk-over of the Site to determine the completeness of the Remedial Action and its consistency with the RD Reports, the Consent Decree, the ROD and applicable Federal and State laws, rules, and regulations.
- B. Following the pre-final inspection, the EPA will either specify the necessary corrective measures to the Remedial Action, as appropriate, or will determine that construction is complete. If the EPA requires corrective measures to the Remedial Action, Settling Defendants shall undertake the corrective measures according to a schedule approved by the EPA. Within fourteen (14) days after completion of the construction of the corrective measures, Settling Defendants and their contractor(s) shall be available to accompany EPA personnel or their representatives on an inspection, as provided for in the preceding paragraph. Said inspection will be followed by further directions and/or notifications by EPA as provided above in this paragraph.
- C. 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 the EPA. If, after the pre-certification inspection, the EPA concurs that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall submit a Draft Remedial Action Report to the EPA within 30 days of the inspection. The Draft Remedial Action Report shall include the following sections:

1. Notice of Completion

A Notice of Completion section shall be provided indicating that the Remedial Action has been completed in compliance with the requirements of the EPA-approved Remedial Design Report, the ROD and the Consent Decree. The Notice of Completion

E. Operation & Maintenance Manual

1. No later than ninety (90) calendar days prior to the scheduled completion date of the Remedial Construction phase of the Work, Settling Defendants shall submit to the EPA an O&M Manual. The O&M Manual shall conform to the EPA guidelines contained in "Considerations for Preparation of Operation and Maintenance manuals," EPA 68-01-0341.
2. The O&M Manual shall include, at a minimum, the following:
 - a. A Sampling, Analysis and Monitoring Plan for O&M activities (See Section VI.A.4, above, for SAMP requirements). 3
 - b. A QAPP for O&M activities. Settling Defendants shall require full CLP deliverables from the laboratory for the analytical data obtained during O&M. Upon request, Settling Defendants shall submit to the EPA the full CLP documentation for this sampling.
 - c. An HSCP for O&M activities.
 - d. A discussion of potential operating problems and remedies for such problems.
 - e. A discussion of alternative procedures in the event of system failure.
 - f. A schedule for equipment replacement.
 - g. An O&M schedule that identifies the frequency of O&M activities and the timing of those activities.
3. The EPA will either approve the O&M Manual, or require modification of it, in accordance with the procedures set forth in this Consent Decree.
4. Proposed modifications to the approved O&M Manual may be submitted to the EPA for consideration upon completion of construction or thereafter if Settling Defendants can demonstrate that such modifications would enhance and/or maintain the environmental monitoring programs.
5. The EPA will either approve, disapprove, or require modifications of the request for modification of the O&M Manual in accordance with the procedures

- (1) Methods of performing the quality control inspections, including when inspections should be made and what to look for;
- (2) Control testing procedures for each specific test. This includes information which authenticates that personnel and laboratories performing the tests are qualified and the equipment and procedures to be used comply with applicable standards;
- (3) Procedures for scheduling and managing submittals, including those of subcontractors, off-Site fabricators, suppliers, and purchasing agents; and
- (4) Reporting procedures including frequency of reports and report formats.

C. Approval of Remedial Action Work Plan

The EPA will either approve the RAWP or require modification of it in accordance with the procedures set forth in this Consent Decree. The EPA will either approve, disapprove or require modification of any requests for modification of the Final Design Report and construction schedule in accordance with the procedures set forth in the Consent Decree.

D. Performance of Remedial Construction

1. Upon the EPA's written approval of the RAWP, Settling Defendants shall complete contractor procurement and initiate the remedial construction in accordance with the RAWP and the approved Final Design Report, which includes the approved remedial construction schedule (which shall reflect construction limitations between December 1 and March 31 based on climatic conditions).
2. During performance of the remedial construction, Settling Defendants may identify and request EPA approval for field changes to the approved RAWP, Final Design Report and construction schedule as necessary to complete the work. The EPA will either approve, disapprove, or require modification of any requests for field changes in accordance with the procedures set forth in this Consent Decree.

- a. Identification of the Remedial Action Project Team (including, but not limited to the Construction Contractor).
- b. A final schedule for the completion of the Remedial Action and all major tasks therein, as well as a schedule for completion of required plans, and other deliverables.
- c. Methodology for implementation of the Construction Quality Assurance Plan (developed during the Remedial Design).
- d. Methodology for implementation of the Operation and Maintenance Plan.
- e. Procedures and plans for the decontamination of construction equipment and the disposal of contaminated materials.
- f. Methods for satisfying permitting requirements.
- g. Discussion of the methods by which construction operations shall proceed. Discussion shall include the following:
 - (1) Timing of and manner in which activities shall be sequenced;
 - (2) Preparation of the Site including security, utilities, decontamination facilities, construction trailers, and equipment storage;
 - (3) Coordination of construction activities;
 - (4) Site maintenance during the Remedial Action;
 - (5) Coordination with local authorities regarding contingency planning and potential traffic obstruction; and
 - (6) Entry and access to the Site during the construction period(s) and periods of inactivity, including provisions for decontamination, erosion control and dust control.
- h. Discussion of construction quality control, including:

8. A method for selection of the construction contractor(s).
9. A proposed schedule for implementing all of the above.

IX. APPROVAL OF REMEDIAL DESIGN REPORTS

- A. The EPA will review and comment on the Remedial Design Investigation Report and Preliminary and Final Remedial Design Reports. Settling Defendants shall make those changes required by the EPA's comments/modifications in accordance with the procedures set forth in this Consent Decree.
- B. Changes required by the EPA's comments/modifications on the Preliminary Remedial Design Report shall be made in the Final Remedial Design Report.
- C. The EPA will either approve the Final Remedial Design Report or will require modification of it, in accordance with the procedures set forth in this Consent Decree. The EPA-approved Final Remedial Design Report shall also be referred to as the "Final Design Report".

X. REMEDIAL ACTION

- A. Within ninety (90) days after approval of the Final Design Report by the EPA, Settling Defendants shall award a contract for Remedial Action.
- B. Within sixty (60) days of the award of the Remedial Action contract, Settling Defendants shall submit a Remedial Action Work Plan ("RAWP") for Remedial Construction activities. The RAWP shall include, at a minimum, the following items:
 1. A "Request for Modification of Approved Final Remedial Design Report", if applicable, including any requests for modification of the approved Final Design Report based on construction methods identified by the contractor(s), or proposed modification of the construction schedule developed under Paragraph VI.F., above, or other new information.
 2. A Site Management Plan ("SMP") for Remedial Action activities. The SMP for Remedial Action shall include, at a minimum, the following items:

- c. a description of the gas monitoring program, which must discuss explosive gas generation at the Site and the controls used to ensure that gas generated at the Site will not create a hazard to health, safety, or property; and
- 3. A Construction Quality Assurance Project Plan ("CQAPP") for sampling, analysis, testing, and monitoring to be performed during the Remedial Construction phase of the Work. (See Section VI.B., above, for CQAPP requirements.) Quality assurance items to be addressed include, at a minimum, the following:
 - a. Inspection and certification of the Work;
 - b. Measurement and daily logging;
 - c. Field performance and testing;
 - d. As-built drawings and logs; and
 - e. Testing of the Work to establish whether the design specifications are attained;
 - f. Testing methods appropriate to remedial construction including, at a minimum, testing of remedial construction materials, as necessary, prior to use, and testing of constructed remedial components to ensure that they meet design specifications.
- 4. An updated HSCP for the Remedial Construction phase of the Work. (See Section VI.C., above, for these requirements.) The Health and Safety Contingency Plan shall address health and safety measures to be implemented and observed by construction personnel, as well as recommended health and safety measures for the adjacent community and general public, together with a description of the program for informing the community of these recommendations. The Contingency Plan shall include the name of the person responsible in the event of an emergency situation, as well as the necessary procedures that must be taken in the event of an emergency, as outlined in the Consent Decree.
- 5. A report describing those efforts made to secure access and obtain other approvals and the results of those efforts. (See Section VI.E, above). Legal descriptions of property or easements to be acquired shall be provided.
- 6. A final construction cost estimate.
- 7. A plan for implementation of construction and construction oversight.

- k. Decontamination areas, staging areas, borrow areas and stockpiling areas;
 - l. Miscellaneous detail sheets; and
 - m. Definitions of all symbols and abbreviations.
- 5. Survey work that is appropriately marked, recorded and interpreted for mapping, property easements and design completion;
 - 6. Construction drawings of all proposed equipment, improvements, details and all other construction and installation items to be developed in accordance with the current standards and guidelines of the New York State Board of Professional Engineers and Land Surveyors. Drawings shall be of standard size, approximately 24" x 36". A list of drawing sheet titles will be provided;
 - 7. Engineering plans indicating, at a minimum, the following:
 - a. Site security measures;
 - b. Roadways;
 - c. Electrical, mechanical, structural, and HVAC drawings if required.

D. Additional Final Design Report Requirements

The final design report shall also include:

- 1. Final plans and specifications;
- 2. An Operation and Maintenance ("O&M") Plan. The O&M Plan shall be prepared in accordance with the Superfund Remedial Design and Remedial Action Guidance, dated September 1986, OSWER Directive 9355.0-4A. The O&M Plan shall include, but not be limited to, the following:
 - a. a description of the personnel requirements, responsibilities, and duties, including discussion for training, lines of authority, sampling, analysis, and monitoring conducted under this Consent Decree;
 - b. a copy of the environmental monitoring plan as required in 6 NYCRR Part 360;

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

4. Engineering plans representing an accurate identification of existing Site conditions, and an illustration of the work proposed. Typical items to be provided on such drawings include, at a minimum, the following:
 - a. Title sheet including at least the title of the project, a key map, the name of the designer, date prepared, sheet index, and EPA/NYSDEC Project identification;
 - b. All property data including owners of record for all properties within 200 feet of the Site;
 - c. A Site survey including the distance and bearing of all property lines that identify and define the project Site;
 - d. All easements, rights-of-way and reservations;
 - e. All buildings, structures, wells, facilities, equipment (existing and proposed) if any;
 - f. A topographic survey, including existing and proposed contours and spot elevations for all areas that will be affected by the remedial actions, based on U.S. Coast and Geodetic Survey data;
 - g. All utilities, existing and proposed;
 - h. Location and identification of all significant natural features including, inter alia, wooded areas, water courses, wetlands, flood hazard areas and depressions;
 - i. Flood hazard data and delineation, if applicable;
 - j. North arrow, scale, sheet numbers and the person responsible for preparing each sheet;

schedule set forth in the RDWP. The RDIR shall summarize the pre-design tasks outlined in Section IV., above, and shall provide a discussion as to how each task was implemented. The RDIR shall report the findings required under each pre-design task, including the results of all sampling and testing performed, and shall provide a discussion of any impacts these findings may have on the Remedial Design.

B. Preliminary and Final Remedial Design Reports

The reports shall be submitted to the EPA and the NYSDEC in accordance with the schedule set forth in the approved RDWP. Each remedial design report shall include a discussion of the design criteria and objectives, with emphasis on the capacity and ability to meet design objectives successfully. Each report shall also include the plans and specifications that have been developed at that point in time along with a design analysis. The design analysis shall provide the rationale for the plans and specifications, including supporting calculations and documentation of how these plans and specifications will meet the requirements of the ROD. The design reports shall also include the following items (to the extent that work has been performed regarding the items):

1. A technical specification for photographic documentation of the Remedial Construction Work;
2. A discussion of the manner in which the Remedial Action will achieve the Performance Standards;
3. A plan for establishing institutional controls (i.e., deed restrictions and/or other similar land use restrictions) to ensure the long-term integrity of the cap; and
4. A draft schedule for Remedial Construction activities, and a preliminary schedule for O&M activities (including post-construction monitoring) and Post-Remediation Monitoring activities.

C. Additional Preliminary Design Report Requirements

The Preliminary Design Report shall include:

1. Preliminary drawings showing general arrangement of all work proposed;
2. Draft Piping & Instrumentation diagrams, as necessary, showing all equipment and control systems;
3. Table of Contents for the specifications, including

Defendants will need to comply with this Consent Decree, with the exception of those approvals needed from the EPA. The plan shall detail how such approvals will be sought, and shall include a schedule for obtaining all necessary approvals. Such approvals shall include the consent of owners of property at or near the Site regarding access to conduct sampling, monitoring or other activities, in accordance with this Consent Decree, and approvals from the off-site waste treatment facility to accept leachate from the Site. The plan shall be amended if subsequent approvals are required.

F. Remedial Design Schedule and Draft Schedule for Remedial Construction, and O&M

1. The RDWP shall include a schedule for the pre-design, preliminary design and final design submittals and a draft schedule for Remedial Construction, and O&M activities. The schedule shall be in the form of a task/subtask activity bar chart or critical path method sequence of events.
2. The draft schedule for Remedial Construction, O&M and Post-Remediation Monitoring activities will be revised during the remedial process, subject to the EPA's approval.

VII. APPROVAL OF REMEDIAL DESIGN WORK PLAN

EPA will either approve the Remedial Design Work Plan, or will require modification of such plan, in accordance with the procedures as set forth in this Consent Decree.

VIII. REMEDIAL DESIGN

Settling Defendants shall perform the Remedial Design as specified in the ROD, in conformance with the Remedial Design Work Plan approved by the EPA and within the time frames specified in the Remedial Design schedule contained therein. The Remedial Design shall include the preparation of the following Remedial Design Reports: a Remedial Design Investigation Report; a Preliminary Remedial Design Report (50% completion); and a Final Remedial Design Report (100% completion).

A. Remedial Design Investigation Report

The Remedial Design Investigation Report (RDIR) shall be submitted to the EPA and the NYSDEC in accordance with the

- f. Description of decontamination procedures for personnel and equipment, and handling and removal of disposable clothing or equipment;
- g. Incidental emergency procedures which address emergency care for personnel injuries and exposure problems, and containment measures. These procedures shall include evacuation routes, internal and external communications procedures for response to fire, explosion, or other emergencies, the name of the nearest hospital and the route to that hospital. Local agencies with the capability to respond to emergencies shall be identified and their capabilities shall be described. A description of the procedures for informing the community of these measures shall be outlined;
- h. Description of the personnel medical surveillance program in effect;
- i. Description of monitoring for personnel safety;
- j. Description of routine and special personnel training programs; and
- k. Description of an air monitoring program to determine concentrations of airborne contaminants to which workers on-Site and persons near the Site boundary may be exposed. The results of work-zone air monitoring may be used as a trigger for implementing site-boundary air monitoring.

D. Description of Additional Remedial Design Tasks

The RDWP shall include, if necessary, a detailed description of all other Remedial Design tasks and pre-design tasks (see Section IV., above) to be performed, along with a schedule for performance of those tasks. Such tasks shall include, at a minimum, the preparation of the Remedial Design Reports required by Section VIII, below, and tasks necessary to ensure compliance with ARARs as outlined in the ROD. The RDWP shall include an outline of the requirements of each of the Remedial Design Reports.

E. Plan for Obtaining Access and Other Approvals

This plan shall address any approvals which Settling

C. Health and Safety Contingency Plan

A Health and Safety Contingency Plan ("HSCP") for all activities performed under this Consent Decree shall be developed by Settling Defendants to address the protection of public health and safety and the response to contingencies that could impact public health, safety, and the environment. The HSCP shall satisfy the requirements of the "Occupational Safety and Health Guidance for Hazardous Waste Site Activities," (October, 1985, DHH 5 NIOSH Publication No. 85-115), and the Occupational Safety and Health Administration, U.S. Department of Labor ("OSHA") requirements cited below:

1. All Site activities shall be performed in such a manner as to ensure the safety and health of personnel so engaged. All Site activities shall be conducted in accordance with all pertinent general industry (29 C.F.R. Part 1910) and construction (29 C.F.R. Part 1926) OSHA standards, and the EPA's Standards Operating Safety Guides (OSWER, 1988) as well as any other applicable State and municipal codes or ordinances. All Site activities shall comply with those requirements set forth in OSHA's final rule entitled "Hazardous Waste Operations and Emergency Response," 29 C.F.R. §1910.120, Subpart H.
2. The HSCP shall include, at a minimum, the following items:
 - a. Plans showing the location and layout of any temporary facilities to be constructed on or near the Site;
 - b. Description of the known hazards and evaluation of the risks associated with the Site and the potential health impacts related to the Site activities;
 - c. List of key personnel and alternates responsible for Site safety, response operations, and protection of the public;
 - d. Description of levels of protection (based on specified standards) to be utilized by all personnel;
 - e. Delineation of Work, decontamination, and safe zones, and definitions of the movement of zones;

- d. That the laboratory utilized for analyses of samples performs all analyses according to accepted EPA methods as documented in the "Contract Lab Program Statement of Work for Organic Analysis, (revision OLM0-1.8)" dated March, 1990 or the latest revision, and the "Contract Lab Program Statement of Work for Inorganic Analysis, (revision ILM0-2.1)" dated September, 1991, or the latest revision, or other EPA approved methods.
- e. Upon receipt from the laboratory, all data will be validated.
- f. Submission of the validation package (checklist, report and Form #1 containing the final data) to EPA, prepared in accordance with the provisions of Subparagraph g., below.
- g. Assurance that all analytical data are validated according to the procedures stated in the "EPA Region II Contract Lab Program Organics Data Review and Preliminary Review (SOP #HW-6, Revision 8)," dated January, 1992, 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.
- h. Upon request by the EPA, Settling Defendants shall promptly provide the EPA with any unvalidated results of all sampling and/or tests or other data generated by Settling Defendants with respect to implementation of this Consent Decree.
- i. Settling Defendants shall require full CLP or CLP-equivalent deliverables from the laboratory for the analytical data from monitoring during the Remedial Design phase. Upon the EPA's request, Settling Defendants shall submit to the EPA the full documentation for this sampling.
- j. Settling Defendants shall ensure that all contracts with the laboratory utilized by Settling Defendants for analyses of samples provide for access of EPA personnel and authorized representatives of the EPA for the purpose of ensuring the accuracy of laboratory results related to the Site.

and monitoring activities.

2. The QAPP shall be developed in accordance with the "Region II CERCLA Quality Assurance Manual," Revision 1, EPA-Region II, dated October, 1989, and all other guidance as specified in this Consent Decree.
3. The QAPP shall include, at a minimum, the following items:
 - a. Title Page
 - b. Table of Contents
 - c. Project Description
 - d. Project Organization and Responsibility
 - e. Quality Assurance Objectives
 - f. Sampling Procedures
 - g. Sample Custody
 - h. Calibration Procedures and Frequency
 - i. Analytical Procedures
 - j. Data Reduction, Validation and Reporting
 - k. Internal Quality Control Checks
 - l. Performance and Systems Audits
 - m. Preventive Maintenance
 - n. Specific Routine Procedures Used to Assess Data Precision, Accuracy, and Completeness
 - o. Corrective Action
 - p. Quality Assurance Reports to Management
4. In order to provide quality assurance and maintain quality control with respect to all samples to be collected, Settling Defendants shall ensure the following:
 - a. Quality-assurance and chain-of-custody procedures shall be performed in accordance with standard EPA protocol and guidance.
 - b. Engagement of laboratories for the analyses of samples which are in good standing in EPA's Contract Laboratory Program ("CLP"), or have demonstrated their ability to perform all tasks required under the CLP.
 - c. In the event that the laboratory utilized by Settling Defendants is not CLP-certified for a relevant set of parameters, Settling Defendants shall ensure that the laboratory will analyze performance evaluation samples submitted by EPA for those parameters for quality assurance purposes.

- d. A plan for conducting treatability studies of the Site leachate for off-site treatment facility consideration;
 - e. A plan for the performance of an evaluation to determine possible measures to mitigate wetlands loss, as required by the Corps of Engineers Wetland Delineation Manual, January 1987, Final Report.
 - f. A plan for the performance of air monitoring during pre-design and design phase field studies.
2. All sampling and monitoring shall be performed in accordance with the "Region II CERCLA Quality Assurance Manual," Revision 1, EPA Region II, dated October 1989, and any updates thereto, or an alternate EPA-approved test method, and the guidelines set forth in this Consent Decree. All testing methods and procedures shall be fully documented and referenced to established methods or standards.
 3. The SAMP shall include, at a minimum, the following items:
 - a. An explanation of the way(s) the sampling, analysis, testing, and monitoring will produce data for the pre-design activity or Remedial Design;
 - b. A detailed description of the sampling, analysis, and testing to be performed, including sampling methods, analytical and testing methods, sampling locations and frequency of sampling;
 - c. A map depicting sampling locations; and
 - d. A schedule for performance of specific tasks.
 4. Additional sampling locations, testing, and analyses subsequently identified shall be submitted as an addendum to the SAMP.

B. Quality Assurance Project Plan

1. The Quality Assurance Project Plan ("QAPP") for the pre-design and design activities shall be developed by Settling Defendants, and approved by the EPA prior to the commencement of any sampling, testing

controls (i.e., deed restrictions and/or other similar land use restrictions) designed to prevent direct contact with the subsurface waste material in the landfill and to ensure the long-term integrity of the cap.

VI. REMEDIAL DESIGN WORK PLAN

Within sixty (60) calendar days of the date on which Settling Defendants receive written notification from the EPA of the approval of the Supervising Contractor, Settling Defendants shall submit a detailed Remedial Design Work Plan ("RDWP") for the design of the remedy to the EPA for review and approval. The RDWP shall provide for the collection of all data needed for performing the Remedial Design. The RDWP shall comply with CERCLA and relevant EPA guidance, including the EPA document entitled "Guidance on Oversight of Remedial Designs and Remedial Actions performed by Potentially Responsible Parties," (OSWER directive 9355.5-01, EPA/540/g-90-001), dated April 1990 and shall be in conformance, inter alia, with the "Superfund Remedial Design and Remedial Action Guidance," dated June, 1986, and other EPA guidance documents. The RDWP shall include plans and schedules for implementation of remedial design and pre-design tasks identified above, and shall include, but not be limited to, the following items:

A. Sampling, Analysis, and Monitoring Plan

1. The Sampling, Analysis, and Monitoring Plan ("SAMP") shall describe in detail the sampling, analysis, and monitoring that shall be performed during the pre-design and design phases, as specified in this SOW, the ROD, and this Consent Decree. The SAMP shall provide, as necessary, the following:
 - a. A plan for the performance of a wetland assessment to include sampling and analysis of surface water and sediment for the purpose of performing an Ecological Risk Analysis;
 - b. A plan for the performance of field studies to generate data necessary to prepare a landfill closure design system (including capping and barrier wall);
 - c. A plan for the performance of an explosive gas investigation to identify the characteristics of gas concentration throughout the landfill to generate data necessary for the installation of a gas venting system;

5. An evaluation of the need for the installation of extraction wells with submersible pumps to actively extract leachate from the landfill. The EPA shall make the final determination as to the need for extraction wells for active leachate collection in addition to passive leachate collection; and
 6. A leachate characterization treatability study, including the Toxicity Characteristic Leaching Procedure (TCLP).
-
- B. A plan for the off-site transport and treatment of collected leachate from the Site. The plan shall be in accordance with "CERCLA Site Discharges to POTWs - Guidance Manual," (EPA/540/G-90/005, August 1990). The plan shall include a notice of approval from the off-site treatment facility for the acceptance of leachate from the Site and copies of the documentation provided to the facility to make the determination. Additionally, the plan shall include an investigation of the sewer system proposed to transport the leachate, which shall evaluate the ability of the sewer system to transport the leachate to the off-site treatment facility without overflows from the system or backup into adjacent services.
 - C. Design of a grading and compaction plan for the landfill, as necessary to provide a stable foundation for the placement of the cap prior to its construction and to achieve proper drainage.
 - D. Design of a perimeter security fence or other acceptable access restriction to ensure protection of the landfill cap.
 - E. Design of a plan for the removal of the field tile drains located to the west of the landfill and their placement under the cap prior to closure.
 - F. Performance of air monitoring prior to and during construction at the Site, to ensure that air emissions resulting from the cap construction meet applicable or relevant and appropriate air emission requirements.
 - G. Provisions for performing long-term monitoring of landfill cap, and gas venting and leachate systems to provide for routine inspections and repairs.
 - H. Provisions for performing long-term air and water quality monitoring to evaluate the effectiveness of the remedial action.
 - I. Preparation of a plan for establishing institutional

- F. Perform an evaluation of impacts the remedial action will have on adjacent agricultural lands in accordance with the guidelines and criteria established in 7 CFR Part 658 for compliance with the Farmland Protection Policy Act.

V. REMEDIAL DESIGN ACTIVITIES

- A. Design of the landfill cap in accordance with New York State closure requirements (6 NYCRR Part 360), as stated in the ROD. At a minimum, as outlined in the ROD, the multi-layer cap shall include:
1. A minimum of 18 inches of compacted clay liner with a post-compaction maximum remolded coefficient of permeability of 1×10^{-7} cm/sec throughout its thickness, 24 inches of low permeable fill, six inches of topsoil, and a grass cover. The low permeability soil cover shall be placed on a minimum of four (4) percent slope along the upper portions of the landfill to promote positive surface-water drainage and a maximum 33 percent slope along the lower portions of the landfill to minimize erosion;
 2. A clay barrier wall around the perimeter of the landfill which shall extend from the cap to the clay/upper till unit underlying the Site and shall minimize the potential for leachate and gas migration from the landfill to the surrounding shallow silt unit;
 3. A landfill gas venting system consisting of a gas venting layer or trenches underlying the low permeability cap material, connected to perimeter trench vents surrounding the landfill and/or vertical vent pipes along the cap of the landfill. The gas venting system shall be located within the clay barrier wall to maximize its effectiveness in controlling horizontal off-site gas migration;
 4. A leachate collection system, consisting of approximately 10,000 feet of eight-inch diameter perforated HDPE pipe installed around the perimeter of the Site above the water table. The system shall be installed in a granular trench with a geotextile liner installed at the clay/granular interface and the granular trench connected to the cap's gas collection trenches. The configuration shall include pumping stations to properly convey the leachate in the system to a collection point;

The pre-remedial design activities to be performed in the implementation of the Selected Remedy for the Site include the following:

- A. Perform a wetland delineation for the Site in accordance with the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual.
- B. Perform a wetland assessment of those wetland areas identified by the wetland delineation. The wetland assessment shall be performed in accordance with Federal and State guidance. The wetland assessment shall include, but shall not be limited to, a depiction of the wetland boundaries identified by the delineation and a description of major plant communities, soil type(s), and hydrology, with the results clearly plotted on a Site map.
- C. Perform an Ecological Risk Analysis (ERA) using the data collected from the wetland assessment, applicable data previously compiled in the Remedial Investigation Report, and additional data necessary for a complete quantification of risks posed by the Site to the wetland ecosystem. Additional sampling and analysis of surface water and sediments shall be done in accordance with the Sampling, Analysis, and Monitoring Plan described in VI.A., below. The ERA shall be performed in accordance with EPA's Risk Assessment Guidance for Superfund (RAGS) Volume II - Environmental Evaluation Manual (March 1989), Eco Update Series (supplementary guidance to RAGS Vol. II; EPA 9345.0-05I, Vol. I-V), and Ecological Hazardous Waste Sites: A Field and Laboratory Reference (EPA/600/3-89/013). The ERA shall evaluate the extent of the Site's impacts on the wetlands and shall recommend whether further action is warranted with respect to the wetlands. Such action may include the excavation and placement under the cap of affected wetland areas and restoration of the excavated areas or extension of the cap itself over the affected wetland areas, with mitigation of any significant net loss of wetland or wetland function. The EPA shall make the final determination as to the need and/or nature of further action to be taken with respect to the wetlands.
- D. Perform a Stage IA cultural resources survey for compliance with the National Historic Preservation Act.
- E. Perform a coastal zone consistency evaluation in accordance with the EPA/NYS Department of State Coastal Zone Consistency Coordination Procedures, for compliance with the Coastal Zone Management Act.

and

- An evaluation of site conditions at least once every 5 years to determine if any modifications to the selected alternative are necessary.

The Work to be performed under this Consent Decree shall include, but shall not be limited to, the following:

- A. Pre-Remedial Design Activities for the Selected Remedy for the Site, as set forth in the ROD. The ROD is attached as Appendix A to this Consent Decree;
- B. Remedial Design ("RD") of the Selected Remedy for the Site, as set forth in the ROD;
- C. Remedial Construction of the Remedial Action; and
- D. Operation and Maintenance ("O&M") of the Remedial Action (including Post-Construction Monitoring).

II. PERFORMANCE STANDARDS

The remedy will comply with all Applicable or Relevant and Appropriate Requirements ("ARARs") as set forth herein and in the ROD. Accordingly, the remedy will reduce the risk to human health and the environment at the Site.

The landfill cap will reduce the infiltration of rainfall and snow melt into the landfill to limit the potential for contaminants to leach into the ground water. The landfill cap will also prevent direct contact with contaminated soils at the Site.

III. PROJECT SUPERVISION/MANAGEMENT, PROJECT COORDINATOR

The Remedial Design, Remedial Construction, O&M, and any other activities performed, will be under the direction and supervision of a qualified New York State licensed professional engineer and meet any and all requirements of applicable Federal, State and local laws. Settling Defendants shall notify the EPA and New York State Department of Environmental Conservation ("NYSDEC"), in writing, of the names of all contractors and subcontractors proposed to be used in the development and implementation of the Work to be performed. Selection of any such engineer, contractor, or subcontractor shall be subject to approval by the EPA.

IV. PRE-REMEDIAL DESIGN ACTIVITIES

"Appendix B"

STATEMENT OF WORK

Niagara County Refuse Site

I. WORK TO BE PERFORMED

The objectives of the Work to be conducted under this Consent Decree for the Niagara County Refuse Site (the "Site") are:

- Preventing direct contact with landfill contents;
- Controlling surface water runoff and erosion;
- Collecting and treating landfill leachate;
- Controlling landfill gas;
- Preventing the infiltration of contaminants into ground water; and
- Remediating contaminated wetland areas, if necessary.

These objectives will be met through the implementation of the Selected Remedy from the EPA's September 24, 1993 Record of Decision ("ROD") for the Site. The major components of the Selected Remedy include the following:

- Construction of a NYS Part 360 Standard Cap;
- Construction of a clay perimeter barrier wall;
- Construction of a gas venting system beneath the cap;
- Construction of a leachate collection system;
- Removal of the field tile drains located to the west of the landfill;
- Performance of a wetlands delineation and assessment, including a supplemental ecological risk analysis;
- Compliance with federal and state regulations, including a cultural resources survey, a coastal zone consistency evaluation and an impact evaluation for adjacent farmland;
- Implementation of deed and access restrictions;
- Implementation of a long-term operation and maintenance program for the cap, gas venting, and leachate system;
- Implementation of long-term air and water quality monitoring;

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Booth Oil Company et al., relating to the Niagara County Refuse Disposal District Superfund Site.

FOR: Town of Wheatfield

Date: 9-20-94



Name: Terry W. Kuehn

[Please Type]

Title: Supervisor

Address: 2800 Church Rd. North Tonawanda, NY 14120

Tel. Number: (716) 694-6680

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

Name: Charles Naughton

[Please Type]

Title: Town Attorney

Address: 2800 Church Rd. North Tonawanda, NY 14120

Tel. Number: (716) 694-6680

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Booth Oil Company et al., relating to the Niagara County Refuse Disposal District Superfund Site.

FOR: Olin Corporation

mlf Date: 9-26-94

Charles W. Newton, III

Name:

Charles W. Newton III

Title:

V.P. Environment, Health & Toxicology

Address:

120 Long Ridge Road, Stamford, CT 0690

Tel. Number:

(203) 356-2000

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

Name:

CT Corporation System

Title:

Address: 1633 Broadway, New York, NY 10019

Tel. Number: (212) 245-4107

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Booth Oil Company et al., relating to the Niagara County Refuse Disposal District Superfund Site.

FOR: OCCIDENTAL CHEMICAL CORP.

Date: 9/21/94

Michael Rudick

Name: MICHAEL RUDICK

[Please Type]

Title: Vice President & General Counsel

Address: 5005 LBJ Freeway, Dallas, TX

Tel. Number: (214) 404-3840

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

JOHN HANNA, JR., ESQ.

Name: WHITEMAN OSTERMAN & HANNA

[Please Type]

Title: Attorney

Address: 1700 Liberty Building, Buffalo, NY

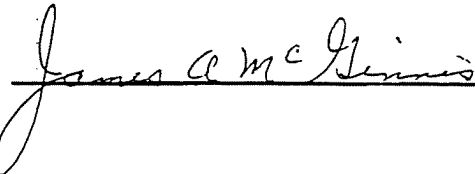
Tel. Number: (716) 854-4420

77

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Booth Oil Company et al., relating to the Niagara County Refuse Disposal District Superfund Site.

FOR: CITY OF NORTH TONAWANDA

Date: September 21, 1994



Name: James A. McGinnis

[Please Type]

Title: Mayor

Address: City Hall, 216 Payne Ave., North

Tel. Number: (716) 695-8540 Tonawanda
NY 14

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

Name: Jeffrey N. Mis, Esq.

[Please Type]

Title: City Attorney

Address: City Hall, 216 Payne Avenue, North Tonawanda, NY 14120

Tel. Number: (716) 695-8590

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Booth Oil Company et al., relating to the Niagara County Refuse Disposal District Superfund Site.

FOR: City of Niagara Falls, New York

Date: September 14, 1994

Jacob A. Palillo

Attest

Elio M. Paradise
CITY CLERK

Name: Jacob A. Palillo
Title: Mayor
Address: City Hall, 745 Main Street
Niagara Falls, New York 14302
Tel. Number: 716 286-4310

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

Name: Douglas J. Crowley
Title: Corporation Counsel
Address: City Hall, 745 Main Street
Niagara Falls, New York 14302
Tel. Number: 716 286-4420

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

-----X
In the Matter Of)
Niagara County Refuse Superfund Site:)
)
)
)
)
INTERNATIONAL PAPER COMPANY)
)
Respondent.)
)
)
Proceeding Under Section 106(a) of the)
Comprehensive Environmental Response,)
Compensation, and Liability Act of 1980,)
as amended (42 U.S.C. § 9606(a)).)
)
-----X

U.S. EPA
Index Number
II CERCLA-95-0207

ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL

UAO for
RD/RA (to
cooperate +
coordinate w/
Consent Decree
parties)

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ADMINISTRATIVE ORDER
FOR REMEDIAL DESIGN AND REMEDIAL ACTION

I. INTRODUCTION AND JURISDICTION

1. This Order directs International Paper Company ("Respondent") to perform a remedial design for the remedy described in the Record of Decision dated September 24, 1993 ("ROD") at the Niagara County Refuse Superfund site (the "Site"), and to implement the design by performing a remedial action. This Order is issued to Respondent by the Environmental Protection Agency ("EPA") under the authority vested in the President of the United States by Section 106(a) of CERCLA (42 U.S.C. § 9606(a)). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580 (52 Fed. Reg. 2926, January 29, 1987), and was further delegated to EPA Regional Administrators on September 13, 1987 by EPA Delegation No. 14-14-B.

II. FINDINGS OF FACT

2. The Site is a former municipal landfill, which includes approximately 50 acres located along the eastern border of the Town of Wheatfield and the western border of the City of North Tonawanda, in New York. The southern edge of the Site lies approximately 500 feet north of the Niagara River.

3. The Site is generally surrounded to the west by fields and woodlands, to the north by wooded wetlands and a clay mining operation, to the east by woodlands and low-density housing, and to the south by access roads and the Niagara River.

4. Refuse disposal operations commenced at the Site in 1969 by the Niagara County Refuse Disposal District ("NCRDD"). Wastes reported to have been disposed of at the Site include household, yard, institutional, commercial, industrial, demolition and construction, and agricultural wastes, as well as sewage treatment plant sludges, street sweepings, and tires. Municipal refuse and industrial wastes were commingled throughout the landfill.

5. The Site continued to be operated by the NCRDD until October 1976 at which time it was officially closed. The Town of Wheatfield acquired ownership of the Site from the NCRDD in June 1977.

6. In 1980, the Site became the focus of several investigations by the EPA, NYSDEC, and United States Geological Survey. The investigations comprised limited sampling of soils, ground water, and drainage swale surface water and sediments. Volatile organic compounds (e.g. methylene chloride), semi-volatile organic compounds (e.g. phenolic compounds, phthalates, and polycyclic aromatic hydrocarbons), pesticides, and metals were detected at varying concentrations in Site media.

7. Based on the results of these investigations, EPA proposed and thereafter included the Site on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, as set forth at 40 C.F.R. Part 300, Appendix B thereto, by publication in the Federal Register on September 1, 1983, 48 Fed. Reg. 40658.

8. In response to the release or threat of a release of hazardous substances at or from the Site, EPA solicited potentially responsible party participation and a group of fourteen (14) parties commenced a Remedial Investigation and Feasibility Study ("RI/FS") at the Site. The RI/FS was performed with EPA oversight pursuant to an Administrative Order on Consent, Index No. II CERCLA-90209.

9. The RI/FS was completed in July 1993, and on July 24, 1993, EPA published notice of the completion of the FS and the proposed plan for addressing the conditions at the Site. EPA provided an opportunity for written and oral comments from the public on the proposed plan.

10. EPA selected the remedial action for the Site in a Record of Decision ("ROD"), executed on September 24, 1993. The remedy selected in the ROD includes (a) the construction of a cap, a perimeter barrier wall, a gas venting system, and a leachate collection system, (b) the removal of the field tile drains located to the west of the landfill, (c) the performance of a wetlands delineation and assessment, and (d) the implementation of deed and access restrictions.

11. The United States has incurred and continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

12. Respondent International Paper Company by contract, agreement or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such Respondent, which were disposed of at the Site.

13. Records obtained from NCRDD, the operator of the Site, indicate that Respondent directly disposed of more than 17,000,000 pounds of waste at the Site between October 1971 and December 1975; and in addition thereto, records indicate that Respondent generated additional waste material that was disposed of at the Site by the City of North Tonawanda.

14. On March 9, 1994 EPA sent special notice to Respondent and other potentially responsible parties pursuant to Section 122 of CERCLA, 42 U.S.C. § 9622 to determine whether such persons would perform the Remedial Design and Remedial Action ("RD/RA") for the Site and pay EPA's past response costs associated with the Site. Respondent International Paper Company failed and refused to

negotiate with EPA concerning performance of the RD/RA and payment of EPA's past costs.

15. On September 23, 1994, the Regional Administrator of EPA Region II, signed an Administrative Order on Consent (CERCLA-94-0213) with eleven de minimis parties pursuant to Section 122(g) of CERCLA requiring the settling parties to pay to EPA the aggregate amount of \$793,866 as their share of total Site response costs. Following the approval of the settlement embodied therein by the Department of Justice and the expiration of a public comment period, the de minimis Administrative Order on Consent became effective on December 27, 1994.

16. On February 3, 1995, the United States District Court for the Western District of New York entered a Consent Decree in United States v. Booth Oil Co., Inc. et al. (Civil Action No. 94-CV-0849) requiring twelve settling defendants to, among other obligations, perform the RD/RA, and to pay to the United States future costs and certain past costs associated with the Site (the "Judicial Consent Decree").

17. Respondent has been given an opportunity to discuss with EPA the basis for issuance of this Order and its terms.

III. CONCLUSIONS OF LAW

18. The Site is a "facility", as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

19. Respondent is a "person", as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

20. Substances referred to in Paragraph 12 are found at the Site and are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), some of which hazardous substances have been released at and from the Site into the environment.

21. Respondent is a "liable" party as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

22. There has been an actual or threatened "release" of a hazardous substance from the Site, as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

23. The actions required by this Order are necessary to protect the public health, welfare, and the environment.

IV. NOTICE TO THE STATE

24. Notice of this Order was given to NYSDEC in accordance with Section 106 of CERCLA, 42 U.S.C. § 9606.

V. DETERMINATION

25. Based on the FINDINGS OF FACT and CONCLUSIONS OF LAW set forth above and the entirety of the administrative record for the Site, the Regional Administrator has determined that the release or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

VI. ORDER

26. Based on the foregoing, Respondent is hereby ordered to comply with all of the terms and provisions of this Order, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order.

VII. DEFINITIONS

27. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order the following definitions shall apply:

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

b. "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 Order, 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.

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

d. "Judicial Consent Decree" shall mean the Judicial Consent Decree in United States v. Booth Oil Co., Inc. et al. (Civil Action No. 94-CV-0849) entered on February 3, 1995 in the United States District Court for the Western District of New York requiring twelve settling defendants to, among other obligations, perform the RD/RA, and to pay to the United States the future costs and certain past costs associated with the Site.

e. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan

promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including any amendments thereto.

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

g. "Operation and Maintenance" or "O&M" shall mean all activities to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved by EPA pursuant to this Order and the SOW.

h. "Paragraph" shall mean a portion of this Order identified by an arabic numeral.

i. "Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in or referenced in the ROD or the SOW or which are otherwise approved by EPA in writing during the course of the Work. Requirements promulgated or modified after the issuance of the ROD or SOW may become Performance Standards pursuant to Section 300.430(f)(1)(ii)(B) of the NCP.

j. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 24, 1993 by the Regional Administrator, EPA Region II, and all attachments thereto attached to this Order as Appendix A.

k. "Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by Respondent to implement the final plans and specifications submitted by Respondent pursuant to the Remedial Design Work Plan and approved by EPA.

l. "Remedial Action Work Plan" or "RA Work Plan" shall mean the document submitted by Respondent pursuant to Paragraph 34 of this Order and described more fully in Paragraph 34.

m. "Remedial Design" or "RD" shall mean those activities to be undertaken by Respondent to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

n. "Remedial Design Work Plan" shall mean the document submitted by Respondent pursuant to Paragraph 33 of this Order and described more fully in Paragraph 33.

o. "Respondent" shall mean International Paper Company.

p. "Response Costs" shall mean all costs, including direct costs, indirect costs, and accrued interest, incurred or to be

incurred by the United States pursuant to any provision of CERCLA with regard to the Site.

q. "Section" shall mean a portion of this Order identified by a roman numeral and includes one or more Paragraphs.

r. "Settling Defendants" shall mean the Settling Defendants under the Judicial Consent Decree.

s. "Site" shall mean the Niagara County Refuse Disposal Superfund site, encompassing approximately 50 acres, located along the eastern border of the Town of Wheatfield, New York and the western border of the City of North Tonawanda, Niagara County, New York and depicted generally on the map attached as Appendix C.

t. "State" shall mean the State of New York.

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

v. "Subparagraph" shall mean a portion of a Paragraph of this Order identified by a lower case letter.

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

x. "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); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents referred to in (1), (2) or (3), above.

y. "Work" shall mean all activities Respondent is required to perform under this Order, except those required by Section XXII (Record Preservation).

VIII. NOTICE OF INTENT TO COMPLY

28. Respondent shall, not later than seven (7) days after the effective date of this Order, provide written notice to EPA's Remedial Project Manager ("RPM") stating whether it will comply with the terms of this Order. If Respondent does not unequivocally commit to comply with this Order, it shall be deemed to have violated this Order and to have failed or refused to comply with this Order. Respondent's written notice shall describe, using facts that exist on or prior to the effective

date of this Order, any "sufficient cause" defenses asserted by Respondent under sections 106(b) and 107(c)(3) of CERCLA. The absence of a response by EPA to the notice required by this Paragraph shall not be deemed to be an acceptance of Respondent's assertions.

IX. PARTIES BOUND

29. This Order shall apply to and be binding upon Respondent, its agents, successors, assigns, officers, directors, and principals. No change in the ownership, corporate status, or other control of Respondent shall alter Respondent's responsibilities under this Order.

30. Respondent shall provide a copy of this Order to any prospective owners or successors before a controlling interest in Respondent's assets, property rights, or stock are transferred to the prospective owner or successor. Respondent shall provide a copy of this Order to each contractor, subcontractor, laboratory or consultant retained to perform any Work under this Order, within sixty (60) days after the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondent shall also provide a copy of this Order to each person representing Respondent with respect to the Site or the Work and shall condition all contracts and subcontracts entered into hereunder upon performance of the Work in conformity with the terms and conditions of this Order. With respect to the activities undertaken pursuant to this Order, each contractor and subcontractor shall be deemed to be related by contract to Respondent within the meaning of 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Notwithstanding the terms of any contract, Respondent is responsible to the United States for compliance with this Order and for ensuring that its contractors, subcontractors and agents comply with this Order, and perform any Work in accordance with this Order.

X. WORK TO BE PERFORMED

31. Work to be Performed.

a. Appendix B attached to this Order is the "Statement of Work" or "SOW" for the performance and completion of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site. The SOW is incorporated into and made an enforceable part of this Order. Respondent shall perform the Work in accordance with Paragraphs 31 through 40 of this Section X and the SOW, and shall comply with all other requirements of this Order.

b. To the extent Settling Defendants are performing or are obligated to perform the Work as identified in Subparagraph a. of this Paragraph 31, pursuant to the Judicial Consent Decree, Respondent shall make best efforts to coordinate with the

Settling Defendants. Best efforts to coordinate shall include, at a minimum:

i. communication in writing within ten (10) days of the effective date of this Order to the Settling Defendants (addressed to the Settling Defendants, with a copy to EPA), as to Respondent's desire to comply with this Order and to participate in the performance of the Work or in lieu of performance to pay for the performance of the Work;

ii. submission within thirty (30) days of the effective date of this Order of a good-faith offer to perform the Work, in whole or in part, or in lieu of performance to pay for the Work, in whole or in part; and

iii. engaging in good-faith negotiations with the Settling Defendants to perform or in lieu of performance to pay for the Work required by this Order if Settling Defendants refuse Respondent's first offer.

c. To the extent Settling Defendants are performing or are obligated to perform the Work as identified in Subparagraph a. of this Paragraph 31, pursuant to any other order or agreement, Respondent shall make best efforts to participate in the performance of the Work with the Settling Defendants. Best efforts to participate shall include, in addition to the requirements set out in Subparagraph b. of this Paragraph 31, at a minimum:

i. performance of the Work as agreed by Respondent and the Settling Defendants to be undertaken by Respondent; and

ii. payment of all amounts as agreed by Respondent and the Settling Defendants to be paid by Respondent if, in lieu of performance, Respondent has offered to pay for the Work required by this Order, in whole or in part.

d. Respondent shall, not later than seven (7) days after the effective date of this Order, notify EPA in writing of its intent to comply with the Order and shall specify Respondent's proposed manner of compliance with the Order. In addition, Respondent shall notify EPA in writing within seven (7) days of the rejection, if any, by the Settling Defendants of Respondent's offer to perform or, in lieu of performance, to pay for the Work.

e. The undertaking or completion of any requirement of this Order by any other person, with or without the participation of Respondent, shall not relieve Respondent of its obligation to perform each and every other requirement of this Order.

f. Any failure to perform, in whole or in part, any requirement of this Order by any other person with whom Respondent is coordinating or participating in the performance of such requirement shall not relieve Respondent of its obligation to perform each and every requirement of this Order.

32. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Respondent under this Order shall be under the direction and supervision of a qualified professional engineer licensed by the State (hereinafter, the "Supervising Contractor"), the selection of which shall be subject to disapproval by EPA. Within sixty (60) days after the effective date of this Order, Respondent 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, Respondent proposes to change a Supervising Contractor, Respondent 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 Order.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Respondent in writing. Respondent 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 thirty (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. Respondent may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within twenty-one (21) days of EPA's authorization to proceed.

33. Remedial Design.

a. The Settling Defendants have submitted to EPA a draft of a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan") and EPA has provided written comments thereon. To the extent that the Remedial Design Work Plan has not been fully approved by EPA upon the effective date of this Order, Respondent shall cooperate with the Settling Defendants in the preparation of the Remedial Design Work Plan. The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon its approval by EPA, shall be incorporated into and become enforceable under this Order. The Remedial Design Work Plan shall include, among other things, a Health and Safety Plan for field design activities 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. In addition to the Health and Safety Plan specified above, the Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, the following plans and schedules: (1) a Sampling, Analysis,

and Monitoring Plan; (2) a Quality Assurance Project Plan (QAPP) in accordance with Section XVII (Quality Assurance, Sampling and Data Analysis); (3) a description of additional remedial design tasks; (4) a Plan for Obtaining Access and Other Approvals; and (5) a Remedial Design Schedule and Draft Schedule for Remedial Construction and O&M. The requirements of these plans and schedules are detailed in the SOW.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Respondent shall implement the Remedial Design Work Plan. Respondent shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XV (EPA Review of Submissions). Unless otherwise directed by EPA, Respondent shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The "Remedial Design Investigation Report" shall summarize the pre-design tasks identified in the SOW and report the resultant findings. The preliminary and final design submittals ("Preliminary Remedial Design Report" and "Final Remedial Design Report") shall include a discussion of the design criteria and objectives and the plans and specifications that have been developed commensurate with 50% completion and 100% completion, respectively. The design analysis shall provide the rationale for the plans and specifications, including supporting calculations and documentation of how the plans and specifications will meet the requirements of the ROD. The design reports shall also include the following: (1) a technical specification for photographic documentation of the Remedial Construction Work; (2) a discussion of the manner in which the Remedial Action will achieve the Performance Standards; (3) a plan for establishing institutional controls; and (4) a draft Schedule for Remedial Construction activities and a preliminary Schedule for O&M activities and Post-remediation Monitoring activities.

e. Other requirements of the Preliminary and Final Remedial Design Reports are provided in the SOW. Among other things, the final design submittal shall include the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) an updated Health and Safety and Contingency Plan for Remedial Construction; and (5) a schedule for implementing the Final Remedial Design Report. The CQAPP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct

a quality assurance program during the construction phase of the project.

34. Remedial Action.

a. Within ninety (90) days after the approval of the final design submittal, Respondent shall award a contract for Remedial Action. Within sixty (60) days of the award of the Remedial Action contract, Respondent shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Order.

b. The Remedial Action Work Plan shall include any request for modification of the approved Final Remedial Design Report, if applicable. The Remedial Action Work Plan shall also include a Site Management Plan, which, at a minimum, shall include the following: (1) identification of the Remedial Action Project Team; (2) the schedule for completion of the Remedial Action; (3) methodology for implementation of the Construction Quality Assurance Plan; (4) methodology for implementation of the Operation and Maintenance Plan; (5) procedures and plans for the decontamination of equipment and the disposal of contaminated materials; (6) methods for satisfying permitting requirements; (7) discussion of the methods by which construction operations shall proceed; and (8) discussion of quality control. The requirements of these plans and schedules are detailed in the SOW.

c. Upon EPA's written approval of the Remedial Action Work Plan, after a reasonable opportunity for review and comment by the State, Respondent shall implement the activities required under the Remedial Action Work Plan in accordance with the approved schedules contained in the Final Remedial Design Report and Remedial Action Work Plan. Respondent 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 XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Respondent shall not commence physical on-site activities at the Site prior to approval of the Remedial Action Work Plan.

d. No later than ninety (90) days prior to the scheduled completion date of the Remedial Construction, Respondent shall submit to EPA an O&M Manual, in accordance with the SOW.

e. At least fourteen (14) days prior to the completion of construction of the Remedial Action, Respondent shall participate in an pre-final inspection, in accordance with the SOW.

35. Within thirty (30) days after Respondent concludes that the Remedial Action has been fully performed, Respondent shall so notify EPA and shall schedule and conduct a pre-certification inspection to be attended by Respondent and EPA. The precertification inspection shall be followed by a written report (Draft Remedial Action Report) submitted within thirty (30) days of the inspection by a qualified professional engineer, licensed by the State, and Respondent's Project Coordinator certifying that the Remedial Action has been completed in full satisfaction of the requirements of this Order, in accordance with the SOW. If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Order, EPA shall notify Respondent in writing of the activities that must be undertaken to complete the Remedial Action and shall set forth in the notice a schedule for performance of such activities. Respondent shall perform all activities described in the notice in accordance with the specifications and schedules established therein. If EPA concludes, following the initial or any subsequent certification of completion by Respondent that the Remedial Action has been fully performed in accordance with this Order, EPA may notify Respondent that the Remedial Action has been fully performed. EPA's notification shall be based on present knowledge and Respondent's certification to EPA, and shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgement of EPA is appropriate at the Site, in accordance with 42 U.S.C. § 9604, 9606, or 9607.

36. Operation and Maintenance. Upon EPA's certification of completion of the Remedial Construction or upon notice from EPA following the final inspection, Respondent shall perform O&M activities in accordance with the EPA-approved O&M Manual, which includes the O&M Schedule.

37. Within thirty (30) days after Respondent concludes that all phases of the Work have been fully performed, that the Performance Standards have been attained, and that all Operation and Maintenance activities have been completed, Respondent shall submit to EPA a written report by a qualified professional engineer, licensed by the State, certifying that the Work has been completed in full satisfaction of the requirements of this order. EPA shall require such additional activities as may be necessary to complete the Work or EPA may, based upon present knowledge at such time and Respondent's certification to EPA, issue written notification to Respondent that the Work has been completed, as appropriate, in accordance with the procedures set

forth in Paragraph 35 for Respondent's certification of completion of the Remedial Action. EPA's notification shall not limit EPA's right to perform periodic reviews pursuant to section 121(c) of CERCLA, 42 U.S.C. § 9621(c), or to take or require any action that in the judgment of EPA is appropriate at the Site, in accordance with 42 U.S.C. § 9604, 9606, or 9607.

38. Respondent shall ensure that a qualified professional engineer, licensed by the State, oversees all of the Work performed at the Site under this Order, and that such professional engineer inspects such Work. At least fourteen (14) days prior to the initiation of remedial construction work with respect to the Site, or sampling, monitoring, or analytical activities to be performed in connection with implementation of the remedy, or Operation and Maintenance, Respondent shall notify EPA, in writing, of the name, title, and qualifications of any engineer proposed to be used in carrying out such activities. EPA may disapprove in its discretion any such engineer based upon his or her professional qualifications. If at any time Respondent proposes to change its engineer, Respondent shall notify EPA, in writing as above, and shall obtain approval from EPA before the new engineer performs any work under this Order.

39. The Work performed by Respondent pursuant to this Order shall, at a minimum, achieve the Performance Standards.

40. Notwithstanding any action by EPA, Respondent remains fully responsible for achievement of the Performance Standards. Nothing in this Order, nor in EPA's approval of any submission made by Respondent pursuant to this Order, shall be deemed to constitute a warranty or representation of any kind by EPA that full performance of the Remedial Design or Remedial Action will achieve the Performance Standards. Respondent's compliance with such approved documents does not foreclose EPA from seeking additional work to achieve the applicable Performance Standards.

XI. FAILURE TO ATTAIN PERFORMANCE STANDARDS

41. In the event that EPA determines that additional response activities are necessary to meet applicable Performance Standards, EPA may notify Respondent that additional response actions are necessary.

42. Unless otherwise stated by EPA, within thirty (30) days of receipt of notice from EPA that additional response activities are necessary to meet any applicable Performance Standards, Respondent shall submit for approval by EPA a work plan for the additional response activities. The plan shall conform to the applicable requirements of Sections X, XVII, and XVIII of this Order. Upon EPA's approval of the work plan pursuant to Section XV, Respondent shall implement the work plan for additional

response activities in accordance with the provisions and schedule contained therein.

XII. EPA PERIODIC REVIEW

43. Under section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations, EPA may review the Site to assure that the Work performed pursuant to this Order adequately protects human health and the environment. Until such time as EPA certifies completion of the Work, Respondent shall conduct the requisite studies, investigations, or other response actions as determined necessary by EPA in order to permit EPA to conduct the review under section 121(c) of CERCLA. As a result of any review performed under this Paragraph, Respondent may be required to perform additional Work or to modify Work previously performed.

XIII. ADDITIONAL RESPONSE ACTIONS

44. EPA may determine that in addition to the Work identified in this Order and attachments to this Order, additional response activities may be necessary to protect human health and the environment. If EPA determines that additional response activities are necessary, EPA may require Respondent to submit a work plan for additional response activities. EPA may also require Respondent to modify any plan, design, or other deliverable required by this Order, including any approved modifications.

45. Not later than thirty (30) days after receiving EPA's notice that additional response activities are required pursuant to this Section, Respondent shall submit a work plan for the response activities to EPA for review and approval. Upon approval by EPA, the work plan shall be incorporated into this Order as a requirement of this Order and shall be an enforceable part of this Order. Upon approval of the work plan by EPA, Respondent shall implement the work plan according to the standards, specifications, and schedule in the approved work plan. Respondent shall notify EPA of its intent to perform such additional response activities within seven (7) days after receipt of EPA's notice regarding additional response activities.

XIV. ENDANGERMENT AND EMERGENCY RESPONSE

46. In the event of any action or occurrence during the performance of the Work which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize the threat, and shall immediately notify the RPM or, if the RPM is unavailable, the Chief of the Western New York Section II of the New York/Caribbean Branch II of the Emergency and Remedial Response Division of EPA Region II.

Respondent shall take such action in consultation with the RPM and in accordance with all applicable provisions of this Order, including but not limited to the Health and Safety Plan. In the event that Respondent fails to take appropriate response action as required by this Section, EPA may take that action instead, and seek reimbursement for all costs of the response action, and Respondent may be subject to penalties pursuant to Paragraph 82 of this Order.

47. Nothing in the preceding Paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XV. EPA REVIEW OF SUBMISSIONS

48. After review of any deliverable, plan, report or other item which is required to be submitted for review and approval pursuant to this Order, EPA may: (a) approve the submission; (b) approve the submission with modifications; (c) disapprove the submission and direct Respondent to re-submit the document after incorporating EPA's comments; or (d) disapprove the submission and assume responsibility for performing all or any part of the response action. As used in this Order, the terms "approval by EPA," "EPA approval," or a similar term means the action described in Subparagraphs (a) or (b) of this Paragraph.

49. In the event of approval or approval with modifications by EPA, Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

50. Upon receipt of a notice of disapproval or a request for a modification, Respondent shall, within twenty-one (21) days or such shorter time as specified by EPA in its notice of disapproval or request for modification, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval, or approval with modifications, Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

51. If any submission is not approved by EPA, Respondent shall be deemed to be in violation of this Order.

52. All plans, reports and other submittals required to be submitted to EPA under this Order, upon approval by EPA, shall be deemed to be incorporated in and an enforceable part of this Order.

XVI. PROGRESS REPORTS

53. In addition to the other deliverables set forth in this Order, Respondent shall provide monthly progress reports to EPA with respect to actions and activities undertaken pursuant to this Order. The progress reports shall be submitted on or before the tenth (10th) day of each month following the effective date of this Order. Respondent's obligation to submit progress reports continues until EPA issues written notification to Respondent that the Work has been completed in accordance with the procedures set forth in Paragraph 35. At a minimum these progress reports shall: (i) describe the actions which have been taken to comply with this Order during the prior month; (ii) include all results of sampling and tests and all other data received by Respondent and not previously submitted to EPA; (iii) describe all work planned for the current month plus the next two following months with schedules relating such work to the overall project schedule for RD/RA completion; and (iv) describe all problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays.

XVII. QUALITY ASSURANCE, SAMPLING AND DATA ANALYSIS

54. a. Respondent shall complete and submit any QA/QC plan(s) in accordance with the EPA publication "Test Methods for Evaluating Solid Wastes" ("SW-846") (November, 1986), the "Region II CERCLA Quality Assurance Manual" (October 1989), and the EPA documents entitled "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAMS-005/80) and "Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Environmental Monitoring" (USEPA, Office of Water Regulations and Standards, May 1984), or any revised versions thereof.

b. Respondent shall use QA/QC procedures in accordance with the QA/QC Plan(s) submitted and approved by EPA pursuant to this Order, and shall use standard EPA Chain of Custody procedures, as set forth in the National Enforcement Investigations Center Policies and Procedures Manual (November 1984), the National Enforcement Investigations Center Manual for the Evidence Audit (September 1981), and Section 1.3 of SW-846, or any amended versions thereof, while conducting all sample collection and analysis activities required herein by any plan. To provide quality assurance and maintain quality control, Respondent shall:

i. Ensure that all contracts with laboratories used by Respondent for the analysis of samples taken pursuant to this Order provide for access of EPA personnel and EPA-authorized representatives to assure the accuracy of laboratory results related to the Site;

ii. Ensure that the laboratories utilized by Respondent for the analysis of samples taken pursuant to this Order perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis", dated February 1988, and any amendments made thereto during the course of the implementation of this Order;

iii. Ensure that all laboratories used by Respondent for analysis of samples taken pursuant to this Order participate in an EPA or EPA-equivalent QA/QC program;

iv. Ensure that the laboratories used by Respondent for the analysis of samples taken pursuant to this Order analyze samples that EPA may submit to those laboratories for purposes of insuring that the laboratories meet EPA-approved QA/QC requirements; and

v. Agree that sampling data generated consistent with the QA/QC Plan shall be admissible as evidence, without objection, in any proceeding under this Order.

55. Respondent shall notify EPA not less than fourteen (14) days in advance of any sample collection activity. At the request of EPA, Respondent shall allow split or duplicate samples to be taken by EPA or its authorized representatives, of any samples collected by Respondent with regard to the Site or pursuant to the implementation of this Order. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

XVIII. COMPLIANCE WITH APPLICABLE LAWS

56. All activities undertaken by Respondent pursuant to this Order shall be undertaken in accordance with the requirements of all applicable or relevant and appropriate federal, State and local laws, regulations and permits, including, but not limited to, laws relating to occupational safety and health. In the event that there is a conflict in an application of applicable or relevant and appropriate federal, State or local laws or regulations, the more stringent law or regulation shall apply. EPA has determined that the activities contemplated by this Order are consistent with the NCP.

57. Except as provided in section 121(e) of CERCLA and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site, although Respondent shall comply with the substantive requirements that would otherwise be included. Where any portion of the Work requires a federal, State, or local permit or approval, Respondent shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

58. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal, State, or local statute or regulation.

59. a. All off-Site transfer, treatment, storage, or disposal of Waste Material shall be in compliance with the applicable requirements of RCRA, 42 U.S.C. § 6901, et seq., section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), the Toxic Substances Control Act, 15 U.S.C. § 2601, et seq., as well as their implementing regulations, and all other applicable federal, State, and local requirements including, but not limited to, 40 CFR Parts 300, 262 and 263 and 6 NYCRR Part 372. Furthermore, Respondent shall provide notice to EPA of any facilities that Respondent proposes to use for such off-Site transfer, treatment, storage, or disposal at least seven (7) days prior to the commencement of such use, and shall obtain approval by EPA's RPM of the use of such facilities.

b. Respondent shall, as soon as practicable but no less than ten (10) days 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 state and to the RPM of each such shipment. However, the notification of shipments shall not apply to any off-Site shipments when the total volume of all shipments will not exceed ten (10) cubic yards.

c. The notification required by Subparagraph b., above, shall be in writing, and shall include the following information: (1) the name and location of the facility to which the Waste Materials is to be shipped; (2) the type and quantity of the Waste Materials to be shipped; (3) the expected schedule for the shipment of the Waste Materials; and (4) the method of transportation. Respondent shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the Waste Materials to another facility within the same state, or to a facility in another state.

XIX. RPM, PROJECT COORDINATOR, NOTIFICATION

60. EPA has designated the following individual as its RPM at the Site:

Michael Negrelli
New York/Caribbean Superfund Branch II
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II
290 Broadway - 20th Floor
New York, N.Y. 10007-1866
(212) 637-4278

61. EPA has the unreviewable right to change its RPM. If EPA changes its RPM, EPA will inform Respondent in writing of the name, address, and telephone number of the new RPM.

62. The RPM shall have the authority lawfully vested in an RPM and On-Scene Coordinator by the NCP. The RPM shall have authority, consistent with the NCP to halt any work required by this Order, and to take any necessary response action.

63. Within forty-five (45) days after the effective date of this Order, Respondent shall designate a Project Coordinator and shall submit the name, address, telephone number, qualifications and job title of the Project Coordinator to EPA for review and approval. Respondent's Project Coordinator shall be responsible for overseeing Respondent's implementation of this Order. If Respondent wishes to change its Project Coordinator, Respondent shall provide written notice to EPA, five (5) days prior to changing the Project Coordinator, of the name and qualifications of the new Project Coordinator. Respondent's selection of a Project Coordinator shall be subject to EPA approval.

64. Whenever, under the terms of this Order, notice is required to be given, a report or other document is required to be forwarded by or to EPA or Respondent, or any other written communication is required, such correspondence shall be directed to the following individuals at the addresses specified below:

a. As to EPA:

3 copies (or such greater number as EPA may request):

Chief, New York/Caribbean Superfund Branch II
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway - 20th Floor
New York, N.Y. 10007-1866

Attention: Niagara County Refuse Superfund Site
Remedial Project Manager

1 copy: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway - 17th Floor
New York, N.Y. 10007-1866

Attention: Niagara County Refuse Superfund Site
Attorney

b. As to the State:

4 copies (or such greater number as EPA or the State may request):

Michael J. O'Toole, Jr.
Director, Division of Hazardous Waste Remediation
NYS Department of Environmental Conservation
50 Wolf Road
Albany, New York 12233-7010

Attention: Niagara County Refuse Site Engineer

c. As to Settling Defendants (for purposes of Subparagraph b. of Paragraph 31 of this Order):

Daniel M. Darragh, Esq.
Buchanan Ingersoll, P.C.
58th Floor
600 Grant Street
Pittsburgh, PA 15219

(with a copy to EPA at the address specified in Subparagraph a. of this Paragraph)

d. As to Respondent:

1 copy: To such address as Respondent's Project Coordinator shall, by written notice to EPA, request.

XX. COMMUNITY RELATIONS

65. Respondent shall cooperate with EPA in providing information regarding the Site or the Work to the public. As requested by EPA, Respondent shall participate in the preparation of such information for distribution to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXI. SITE ACCESS AND DATA/DOCUMENT AVAILABILITY

66. Respondent shall allow EPA and its authorized representatives and contractors to enter and freely move about all property at the Site and off-Site areas subject to or affected by the Work under this Order or where documents required to be prepared or maintained by this Order are located, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the Work, the Site or Respondent and its representatives or contractors pursuant to this Order; reviewing the progress of Respondent in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives or contractors

deem necessary; using a camera, sound recording device or other documentary type equipment; and verifying the data submitted to EPA by Respondent. Respondent shall allow EPA and its authorized representatives to enter the Site, to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to the Work. Nothing herein shall be interpreted as limiting or affecting EPA's right of entry or inspection authority under federal law.

67. On request of EPA and subject to any claims of applicable privilege(s), Respondent shall submit to EPA all documents in its possession, custody, or control relating to (1) Respondent's offers to or agreements with the Settling Defendants to perform or pay for the Work, or (2) Respondent's performance of or payment for the Work required by this Order in conjunction with the Settling Defendants.

68. Respondent may assert a claim of business confidentiality covering part or all of the information submitted to EPA pursuant to the terms of this Order under 40 C.F.R. § 2.203, provided such claim is not inconsistent with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or other provisions of law. This claim shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated by Respondent at the time the claim is made. Information determined to be confidential by EPA will be given the protection specified in 40 C.F.R. Part 2. If no such claim accompanies the information when it is submitted to EPA, it may be made available to the public by EPA or the state without further notice to the Respondent. Respondent shall not assert confidentiality claims with respect to any data related to Site conditions, sampling, or monitoring.

69. Respondent shall maintain for the period during which this Order is in effect, an index of documents that Respondent claims contains confidential business information. The index shall contain, for each document, the date, author, addressee, and subject of the document. Upon written request from EPA, Respondent shall submit a copy of the index to EPA.

XXII. RECORD PRESERVATION

70. Respondent shall provide to EPA upon request, copies of all documents and information within its possession and/or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Order, 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. Respondent shall also make available to EPA for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with

knowledge of relevant facts concerning the performance of the Work.

71. Until ten (10) years after completion of the Work, Respondent shall preserve and retain all records and documents in its possession or control, including the documents in the possession or control of its contractors and agents that relate in any manner to the Site and to the performance of the Work. At the conclusion of this document retention period, Respondent shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and upon request by the United States, Respondent shall deliver any such records or documents to EPA.

XXIII. DELAY IN PERFORMANCE

72. Any delay in performance of this Order that, in EPA's judgment, is not properly justified by Respondent shall be considered a violation of this Order. Any delay in performance of this Order shall not affect Respondent's obligations to fully perform all obligations under the terms and conditions of this Order.

73. Respondent shall notify EPA of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone to the RPM within forty-eight (48) hours after Respondent first knew or should have known that a delay might occur. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Within seven (7) days after notifying EPA by telephone, Respondent shall provide written notification fully describing the nature of the delay, any justification for delay, any reason why Respondent should not be held strictly accountable for failing to comply with any relevant requirements of this Order, the measures planned and taken to minimize the delay, and a schedule for implementing the measures that will be taken to mitigate the effect of the delay. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

XXIV. ASSURANCE OF ABILITY TO COMPLETE WORK

74. Respondent shall demonstrate its ability to complete the Work required by this Order and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within sixty (60) days after approval of the RD Work Plan, one of the following: (1) a surety bond guaranteeing performance of the Work; (2) one or more irrevocable letters of credit equalling the total estimated cost of the Work; (3) a trust fund; (4) an unconditional written guarantee in favor of the United States to perform the Work, issued by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have

a substantial business relationship with Respondent; or (5) a demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f) or other financial information to allow EPA to determine that Respondent has sufficient resources and liquidity to perform the Work. Respondent shall demonstrate financial assurance in an amount no less than the estimate of cost for the remedial design and remedial action contained in the ROD. If Respondent seeks to demonstrate ability to complete the remedial action by means of internal financial information, or by guarantee of a third party, they shall resubmit such information annually, on the anniversary of the effective date of this Order. If EPA determines that such financial information is inadequate, Respondent shall, within thirty (30) days after receipt of EPA's notice of determination, obtain and present to EPA for approval one of the other forms of financial assurance listed above.

75. At least seven (7) days prior to commencing any work at the Site pursuant to this Order, Respondent shall submit to EPA a certification that Respondent or its contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondent pursuant to this Order. Respondent shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Order.

XXV. ACCESS TO SITE NOT OWNED BY RESPONDENT

76. If the Site, the off-Site area that is to be used for access, property where documents required to be prepared or maintained by this Order are located, or other property subject to or affected by this Order, is owned in whole or in part by parties other than those bound by this Order, Respondent will obtain, or use its best efforts to obtain, site access agreements from the present owners within ninety (90) days of the effective date of this Order, or such other assurances of satisfactory access required to perform the Work as may be approved by EPA pursuant to a Site access plan submitted within such ninety (90) day period. Such agreements or other assurances of access shall provide access for EPA, its contractors and oversight officials, the State and its contractors, and Respondent or Respondent's authorized representatives and contractors, and such agreements shall specify that Respondent is not EPA's representative with respect to liability associated with Site activities. Respondent shall save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action or other costs incurred by the United States including but not limited to attorneys fees and other expenses of litigation and settlement arising from or on account of acts or omissions of Respondent, its officers, directors, employees, agents,

contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Order, including any claims arising from any designation of Respondent as EPA's authorized representatives under section 104(e) of CERCLA. Copies of access agreements or other access assurances shall be provided to EPA prior to Respondent's initiation of field activities. Respondent's best efforts shall include providing reasonable compensation to any off-Site property owner. If access agreements or other access assurances are not obtained within the time referenced above, Respondent shall immediately notify EPA of its failure to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for the Respondent, may perform those response actions with EPA contractors at the property in question, or may terminate the Order if Respondent cannot obtain access agreements. If EPA performs those tasks or activities with contractors and does not terminate the Order, Respondent shall perform all other activities not requiring access to that property. Respondent shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

XXVI. UNITED STATES NOT LIABLE

77. The United States, by issuance of this Order, assumes no liability for any injuries or damages to persons or property resulting from acts or omissions by Respondent, or its directors, officers, employees, agents, representatives, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order. Neither EPA nor the United States may be deemed to be a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, assigns, contractors, or consultants in carrying out any action or activity pursuant to this Order.

XXVII. ENFORCEMENT AND RESERVATIONS

78. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. § 9607, for recovery of any Response Costs incurred by the United States in connection with the Site. This reservation shall include but not be limited to past costs, future costs, direct costs, indirect costs, the costs of oversight, as well as accrued interest as provided in section 107(a) of CERCLA.

79. Notwithstanding any other provision of this Order, at any time during the response action, EPA may perform its own studies, complete the response action (or any portion of the response action) as provided in CERCLA and the NCP, and seek reimbursement from Respondent for its costs, or seek any other appropriate relief.

80. Nothing in this Order shall preclude EPA from taking any additional enforcement actions, including modification of this Order or issuance of additional Orders, and/or additional remedial or removal actions as EPA may deem necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

81. Notwithstanding any provision of this Order, the United States hereby retains all of its information gathering, inspection and enforcement authorities and rights under CERCLA, RCRA and any other applicable statute or regulation.

82. Respondent shall be subject to civil penalties under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), of not more than \$25,000 for each day in which Respondent willfully violates, or fails or refuses to comply with this Order without sufficient cause. In addition, failure to properly provide response actions under this Order, or any portion hereof, without sufficient cause, may result in liability under section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for punitive damages in an amount at least equal to, and not more than three times the amount of any costs incurred by EPA as a result of such failure to take proper action.

83. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person for any liability it may have arising out of or relating in any way to the Site.

84. If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XXVIII. ADMINISTRATIVE RECORD

85. Upon request by EPA, Respondent must submit to EPA all documents related to the response action for possible inclusion in the administrative record file.

XXIX. EFFECTIVE DATE AND COMPUTATION OF TIME

86. This Order shall be effective seven (7) days after the date that this Order is received by Respondent if no conference is requested pursuant to the next Paragraph of this Order. If such conference is timely requested, this Order shall be effective five (5) days after the date set by EPA for the conference. All times for performance of ordered activities shall be calculated from this effective date.

XXX. OPPORTUNITY TO CONFER

87. Respondent may, within seven (7) days after this Order has been received, request a conference with EPA to discuss this Order. If requested, the conference shall occur on the date set by EPA at the offices of EPA Region II, 290 Broadway, New York, N.Y. 10007-1866.

88. Requests for a conference must be made by telephone to Michael A. Mintzer, Esq., Office of Regional Counsel, Region II, telephone (212) 264-3348, followed by written confirmation mailed that day to EPA at the address set forth in Section XIX of this Order.

89. The purpose and scope of the conference shall be limited to issues involving the implementation of the response actions required by this Order and the extent to which Respondent intends to comply with this Order. The conference is not an evidentiary hearing, and does not constitute a proceeding to challenge this Order nor does it give Respondent a right to seek review of this Order, or to seek resolution of potential liability, and no official stenographic record of the conference will be made. At any conference held pursuant to Respondent's request, Respondent may appear in person or by an attorney or other representative.

So Ordered, this ____ day of July, 1995.

BY: _____
Jeanne M. Fox
Regional Administrator
U.S. Environmental Protection Agency

RECEIVED

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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IN THE MATTER OF THE)
NIAGARA COUNTY REFUSE SUPERFUND SITE)
)
ALLIEDSIGNAL, INC.,)
DEGRAFF MEMORIAL HOSPITAL)
E.I. DU PONT DE NEMOURS & CO.,)
FEDERAL-MOGUL CORPORATION,)
KIMBERLY-CLARK CORPORATION)
NABISCO, INC.,)
NATIONAL GRINDING WHEEL CO., INC.,)
NIAGARA UNIVERSITY,)
NL INDUSTRIES, INC.,)
TEXTRON, INC.,)
WASTE MANAGEMENT OF NEW YORK, INC.,)
)
Respondents.)
)
Proceeding under Section 122(g)(4))
of the Comprehensive Environmental)
Response, Compensation, and)
Liability Act of 1980, as amended,)
42 U.S.C. § 9622(g)(4).)
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Settlement
AOC

ADMINISTRATIVE ORDER
ON CONSENT

Index Number
CERCLA-94-0213

I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107(a) of CERCLA, 42 U.S.C. § 9606 or § 9607(a). The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E (issued Sept. 13, 1987, amended by memorandum, June 17, 1988).

2. This Consent Order is issued to AlliedSignal, Inc., DeGraff Memorial Hospital, E.I. Du Pont de Nemours & Co., Federal-Mogul Corporation, Kimberly-Clark Corporation, Nabisco, Inc., National Grinding Wheel Co., Inc., Niagara University, NL Industries, Inc., Textron, Inc., and Waste Management of New York, Inc. (hereinafter, "Respondents"). This Consent Order concerns the contribution of Respondents toward the costs of the response actions that have been and will be conducted in

connection with the Niagara County Refuse site ("Site"), located on the border of the Town of Wheatfield and the City of North Tonawanda, Niagara County, New York.

3. Each Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. This Consent Order was negotiated and executed by EPA and Respondents in good faith to avoid the expense and delay of litigation over the matters addressed by this Consent Order. Each Respondent further consents to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

4. EPA and Respondents agree that this Consent Order is entered into without any admission of liability for any purpose as to any matter arising out of the transactions or occurrences alleged in this Consent Order.

II. PARTIES BOUND

5. This Consent Order shall apply to and be binding upon EPA and upon each Respondent and its successors and assigns. Each signatory to this Consent Order represents that he or she is fully and legally authorized to enter into the terms and conditions of this Consent Order and to bind the party represented by him or her. Any change in ownership or corporate status of a Respondent, including any transfer of assets or real or personal property, shall in no way alter such Respondent's payment responsibilities under this Order.

III. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Order, including the attached appendices, the following definitions shall apply:

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

B. "Consent Order" shall mean this Administrative Order on Consent and all appendices attached thereto. In the event of a conflict between this Order and any appendix, this Consent Order shall control.

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

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

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

F. "Parties" shall mean the United States and Respondents.

G. "Respondents" shall mean AlliedSignal, Inc., DeGraff Memorial Hospital, E.I. Du Pont de Nemours & Company, Federal-Mogul Corporation, Kimberly-Clark Corporation, Nabisco, Inc., National Grinding Wheel Company, Inc., Niagara University, NL Industries, Inc., Textron, Inc., and Waste Management of New York, Inc.

H. "ROD" shall mean the September 24, 1993 Record of Decision for the Niagara County Refuse Site, which selected and set forth the remedy to be implemented at the Site.

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

J. "Site" shall mean the Niagara County Refuse Disposal Superfund site, including approximately 50 acres, located along the eastern border of the Town of Wheatfield, New York and along the western border of the City of North Tonawanda, Niagara County, New York.

K. "State" shall mean the State of New York.

L. "Total Site Response Costs" shall mean the total costs of the design and implementation of the remedial action selected by EPA with respect to the Site in the Record of Decision referred to in Paragraphs 6.H. and 15 of this Consent Order and any future costs if the remedial action set forth in the ROD is not protective of public health or the environment; the total cost of the remedial investigation and feasibility study for the Site referred to in Paragraphs 13 and 14 of this Consent Order; and the total response costs, including interest, which have been or which will be incurred by EPA with respect to the Site.

M. "United States" shall mean the United States of America, its agencies, departments, and instrumentalities.

N. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. §

9601(14); and (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33).

IV. FINDINGS OF FACT

7. The Site is a former municipal landfill, which includes approximately 50 acres located along the eastern border of the Town of Wheatfield and the western border of the City of North Tonawanda, in New York. The southern edge of the Site lies approximately 500 feet north of the Niagara River.

8. The Site is generally surrounded to the west by fields and woodlands, to the north by wooded wetlands and a clay mining operation, to the east by woodlands and low-density housing, and to the south by access roads and the Niagara River.

9. Refuse disposal operations commenced at the Site in 1969 by the Niagara County Refuse Disposal District ("NCRDD"). Wastes reported to have been disposed of at the Site include household, yard, institutional, commercial, industrial, demolition and construction, and agricultural wastes, as well as sewage treatment plant sludges, street sweepings, and tires. Municipal refuse and industrial wastes were commingled throughout the landfill.

10. The Site continued to be operated by the NCRDD until October 1976 at which time it was officially closed. The Town of Wheatfield acquired ownership of the Site from the NCRDD in June 1977.

11. In 1980, the Site became the focus of several investigations by the EPA, NYSDEC, and United States Geological Survey. The investigations comprised limited sampling of soils, ground water, and drainage swale surface water and sediments. Volatile organic compounds (e.g. methylene chloride), semi-volatile organic compounds (e.g. phenolic compounds, phthalates, and polycyclic aromatic hydrocarbons), pesticides, and metals were detected at varying concentrations in Site media.

12. Based on the results of these investigations, EPA proposed and thereafter included the Site on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, as set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 1, 1983, 48 Fed. Reg. 40658.

13. In response to the release or threat of a release of hazardous substances at or from the Site, EPA solicited potentially responsible party participation and a group of fourteen (14) parties commenced a Remedial Investigation and Feasibility Study ("RI/FS") at the Site. The RI/FS was performed

with EPA oversight pursuant to an Administrative Order on Consent, Index No. II CERCLA-90209.

14. The RI/FS was completed in July 1993, and on July 24, 1993, EPA published notice of the completion of the FS and the proposed plan for addressing the conditions at the Site. EPA provided an opportunity for written and oral comments from the public on the proposed plan.

15. EPA selected the remedial action for the Site in a Record of Decision ("ROD"), executed on September 24, 1993. The remedy selected in the ROD includes (a) the construction of a cap, a perimeter barrier wall, a gas venting system, and a leachate collection system, (b) the removal of the field tile drains located to the west of the landfill, (c) the performance of a wetlands delineation and assessment, and (d) the implementation of deed and access restrictions.

16. EPA, pursuant to the "Special Notice" procedures set forth in Section 122 of CERCLA, 42 U.S.C § 9622, notified 17 parties that it considered them to be responsible parties under CERCLA, and EPA demanded payment of its past response costs and provided the parties with the opportunity to implement the remedy selected in the ROD. Negotiations are currently being conducted with a number of these parties, and Respondents to this Consent Order seek to resolve their liability with the United States concerning the past response costs, the implementation of the remedy selected in the ROD, as well as any future response costs incurred by EPA associated with the conditions identified in the RI/FS at the Site.

17. The United States has incurred and continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site. As of July 1, 1994, EPA has incurred at least \$1,030,000 in past response costs in connection with the Site.

18. In accordance with Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), information currently known to EPA indicates that Respondents arranged for the transport and treatment and/or disposal of materials containing hazardous substances, and that such materials were disposed of at the Site in an amount that does not exceed a de minimis portion of the hazardous substances disposed of at the Site. Based upon the information known to EPA, the amount of hazardous substances contributed to the Site by each Respondent does not exceed one percent (1%) of the total hazardous substances at the Site, and the toxic or other hazardous effects of the hazardous substances contributed by each Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

19. In evaluating the settlement embodied in this Consent Order, EPA has considered the potential costs of remediating contamination at or in connection with the Site, taking into account possible cost overruns in completing the remedial action selected in the ROD and possible future costs if the remedial action that has been selected by EPA with respect to the Site proves not to be protective of public health or the environment.

20. Payments required to be made by each Respondent pursuant to this Consent Order, as reflected in Paragraph 23.B. hereof, each are a minor portion of the Total Site Response Costs. Total Site Response Costs are estimated for settlement purposes to be equal to \$22,500,000.

V. DETERMINATIONS BY EPA

21. Based upon the Findings of Fact set forth above and on the administrative record for this Site, EPA has determined that:

A. the Site is a "facility", as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

B. each Respondent is a "person", as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21);

C. each Respondent is a "potentially responsible party" within the meaning of Sections 107(a) and 122(g)(1) of CERCLA, 42 U.S.C. §§9607(a) and 9622(g)(1);

D. there has been an actual or threatened "release" of a hazardous substance from the Site, as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22);

E. prompt settlement with Respondents is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

F. each Respondent's payments to be made under this Consent Order represent only a minor portion of the response costs at the Site pursuant to Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1);

G. the amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent are minimal in comparison to other hazardous substances at the Site, pursuant to Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A); and

H. i. Respondent AlliedSignal, Inc., as successor to Eltra Corporation, through its Prestolite Battery Division,

arranged for the disposal of hazardous substances owned or possessed by it at the Site, and based upon the information known to EPA, the amount of hazardous substances contributed to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site, and the toxic or other hazardous effects of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site;

ii. Respondent DeGraff Memorial Hospital, arranged for the disposal of hazardous substances owned or possessed by it at the Site, and based upon the information known to EPA, the amount of hazardous substances contributed to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site and the toxic or other hazardous effects of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site;

iii. Respondent E.I. Du Pont de Nemours & Co., arranged for the disposal of hazardous substances owned or possessed by it at the Site, and based upon the information known to EPA, the amount of hazardous substances contributed to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site and the toxic or other hazardous effects of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site;

iv. Respondent Federal-Mogul Corporation, through its former National Grinding Wheel division, arranged for the disposal of hazardous substances owned or possessed by it at the Site, and based upon the information known to EPA, the amount of hazardous substances contributed to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site and the toxic or other hazardous effects of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site;

v. Respondent Kimberly-Clark Corporation, arranged for the disposal of hazardous substances owned or possessed by it at the Site, and based upon the information known to EPA, the amount of hazardous substances contributed

to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site and the toxic or other hazardous effects of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site;

vi. Respondent Nabisco, Inc., arranged for the disposal of hazardous substances owned or possessed by it at the Site, and based upon the information known to EPA, the amount of hazardous substances contributed to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site and the toxic or other hazardous effects of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site;

vii. Respondent National Grinding Wheel Co., Inc., as successor to National Grinding Wheel division of Federal Mogul Corporation, arranged for the disposal of hazardous substances owned or possessed by it at the Site, and based upon the information known to EPA, the amount of hazardous substances contributed to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site and the toxic or other hazardous effects of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site;

viii. Respondent Niagara University, arranged for the disposal of hazardous substances owned or possessed by it at the Site, and based upon the information known to EPA, the amount of hazardous substances contributed to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site and the toxic or other hazardous effects of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site;

ix. Respondent NL Industries, Inc., through its former TAM division, arranged for the disposal of hazardous substances owned or possessed by it at the Site, and based upon the information known to EPA, the amount of hazardous substances contributed to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site and the toxic or other hazardous effects

of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site;

x. Respondent Textron, Inc., through its Bell Aerospace division, arranged for the disposal of hazardous substances owned or possessed by it at the Site, and based upon the information known to EPA, the amount of hazardous substances contributed to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site and the toxic or other hazardous effects of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site; and

xi. Respondent Waste Management of New York, Inc., as successor to Downing Container Corporation, accepted for transport for disposal hazardous substances disposed by it at the Site, the Site having been selected by Respondent for disposal, and based upon the information known to EPA, the amount of hazardous substances contributed to the Site by this Respondent does not exceed one percent (1%) of the hazardous substances present at the Site and the toxic or other hazardous effects of the hazardous substances contributed by this Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

VI. ORDER

22. Based upon the administrative record for this Site and the Findings of Fact and Determinations set forth above, and in consideration of the promises and covenants set forth herein, and intending to be legally bound, EPA and Respondents agree, and EPA hereby orders, as follows.

VII. PAYMENTS BY RESPONDENTS

23. A. Within sixty (60) days of the effective date of this Consent Order, each Respondent shall remit to EPA the amount set forth in Paragraph 23.B. for each such Respondent, by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." Each check shall reference the Site name, the name and address of Respondent, and the EPA Index Number of this Consent Order (CERCLA-94-0213), and shall be sent to the following address:

EPA Region II
 Attn: Superfund Accounting
 P. O. Box 360188M
 Pittsburgh, Pennsylvania 15251

B. The amount to be paid by each Respondent pursuant to this Consent Order is as follows:

<u>Respondent</u>	<u>Amount</u>
1. AlliedSignal, Inc.	\$ 72,875
2. DeGraff Memorial Hospital	44,730
3. E.I. Du Pont de Nemours & Co.	99,018
4. Federal-Mogul Corporation and National Grinding Wheel Co., Inc.	101,206
5. Kimberly-Clark Corporation	9,550
6. Nabisco, Inc.	137,099
7. Niagara University	72,373
8. NL Industries, Inc.	40,761
9. Textron, Inc.	52,278
10. Waste Management of New York, Inc.	<u>163,976</u>
TOTAL	\$793,866

C. The amounts to be paid by each Respondent under this Consent Decree include a premium to take into account possible cost overruns in completing the remedial action selected in the ROD and possible future costs if the remedial action that has been selected by EPA with respect to the Site proves not to be protective of public health or the environment.

24. Each Respondent shall simultaneously send a copy of each of its checks to:

Michael Mintzer
 Assistant Regional Counsel
 Office of Regional Counsel
 U.S. Environmental Protection Agency, Region II
 26 Federal Plaza, Room 437
 New York, NY 10278

VIII. CIVIL PENALTIES

25. In addition to any other remedies or sanctions available to EPA, any Respondent who fails or refuses to comply with any term or condition of this Consent Order shall be subject to a civil penalty of up to \$25,000 per day of such failure or refusal pursuant to Section 122(1) of CERCLA, 42 U.S.C. § 9622(1).

IX. CERTIFICATION OF RESPONDENTS

26. By signing this Consent Order, each Respondent certifies to the best of its knowledge and belief, the following:

A. Respondent has provided to EPA all information in its possession, or in the possession of its officers, directors, employees, contractors, agents, or assigns, that relates in any way to the generation, treatment, transportation, storage, or disposal of any Waste Material(s) at or in connection with the Site;

B. the information described in Paragraph 26.A., as discussed in correspondence heretofore submitted and explained to EPA by Respondent, is materially true and correct with respect to the amount of Waste Material(s) that Respondent may have transported to or arranged for disposal at the Site, with respect to the chemical nature and constituents of such Waste Material(s), and with respect to the toxic or other hazardous effects of such Waste Material(s); and

C. with respect to the totality of the information provided to EPA by Respondent as described in Paragraph 26.A. in combination with any information provided to Respondent by EPA describing any alleged involvement related to the Site by Respondent, Respondent neither possesses nor knows of other documents or information that would suggest:

i. that Respondent has shipped a higher volume of Waste Material(s) to the Site than is indicated by this information; or

ii. that Respondent has shipped Waste Material(s) to the Site possessing different chemical natures or constituents or possessing more toxic or other hazardous effects than are indicated by this information.

X. COVENANTS NOT TO SUE BY PLAINTIFF

27. In consideration of the payments that will be made by Respondents pursuant to section VII of this Consent Order, and except as specifically provided in Paragraphs 28 through 30 of this Section, the United States covenants not to sue or to take any other civil or administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606, 9607(a), relating to the Site. With respect to present and future liability, these covenants not to sue shall take effect upon receipt of the payments required by Section VII of this Consent Order. These covenants not to sue are conditioned upon

the complete satisfaction by Respondents of their payment obligations under this Order. These covenants not to sue extend only to Respondents and do not extend to any other person.

Reservation of Rights

28. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 27. The United States reserves, and this Consent Order is without prejudice to, all rights against Respondents with respect to all other matters, including the following:

A. claims based on a failure to make the payments required by Section VII of this Consent Order;

B. liability arising from the past, present, or future disposal, release, or threat of release of hazardous substances unrelated to this Site;

C. liability for damages for injury to, destruction of, or loss of natural resources including the reasonable cost of assessing such injury, destruction or loss;

D. liability for costs, including the reasonable costs of assessing natural resource damages, that have been or may be incurred by the Department of the Interior, the National Oceanic and Atmospheric Administration, or any other trustees for natural resources relating to the Site;

E. criminal liability; and

F. liability for violations of federal or state law other than those that are addressed under this Consent Order.

29. Nothing in this Consent Order constitutes a covenant not to sue or a covenant not to take action or otherwise limits the ability of the United States, including EPA, to seek or obtain further relief from any Respondent, and the covenant not to sue in this Consent Order is null and void, if information not known to EPA as of the date of signature of this Consent Order by EPA is discovered that indicates that such Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that Respondent, in the sole judgment of EPA, no longer qualifies as a de minimis party at the Site because such party contributed hazardous substances which are either significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site, or both.

30. Nothing in this Consent Order is intended as a release or covenant not to sue for any entity not a signatory to this

Order, and the United States expressly reserves its rights to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States, including EPA, may have against any person, firm, corporation or other entity not a signatory to this Order. Nothing in this Consent Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Order.

XI. COVENANTS BY RESPONDENTS

31. In consideration of the United States' covenants not to sue in Section X, Paragraph 27, Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, its agencies, officers, representatives, contractors or employees with respect to the Site or this Consent Order including (a) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507), through CERCLA Sections 106(b)(2), 111, or 112, 42 U.S.C. §§ 9606(b)(2), 9611, or 9612, or any other provision of law, and (b) any claim under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607, 9613, related to the Site.

XII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

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

33. With regard to claims for contribution against Respondents for matters addressed in this Consent Order, the Parties agree that each Respondent is entitled to such protection from contribution actions or claims as is provided by CERCLA Section 122(g)(5), 42 U.S.C. § 9622(g)(5). The matters addressed in this Consent Order, for purposes of the preceding sentence, are the Total Site Response Costs. Such protection with respect to each Respondent is conditional upon that Respondent's compliance with the requirements of this Consent Order.

XIII. CLAIMS AGAINST THE FUND

34. Nothing in this Consent Order shall be deemed to constitute preauthorization of a CERCLA claim within the meaning of Sections 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612, or 40 C.F.R. §300.700(d).

XIV. OPPORTUNITY FOR PUBLIC COMMENT

35. This de minimis Consent Order shall be subject to a 30-day public comment period pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). The United States may withdraw its consent to this Consent Order if comments received disclose facts or considerations that indicate that this Consent Order is inappropriate, improper, or inadequate.

XV. ATTORNEY GENERAL APPROVAL


36. This Consent Order shall be deemed to be issued upon the approval of the settlement embodied in this Consent Order by the Attorney General or her designee pursuant to Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XVI. EFFECTIVE DATE

37. The effective date of this Consent Order shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to paragraph 35, above, has closed and that comments received, if any, do not require EPA to modify or withdraw from this Consent Order.

IT IS SO AGREED AND ORDERED:
U.S. Environmental Protection Agency

By:


JEANNE M. FOX
Regional Administrator
U.S. Environmental Protection Agency
Region II

Date

9/23/54

CONSENT

Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this Consent Order on behalf of Respondent certifies under penalty of perjury under the laws of the United States and of the State of Respondent's incorporation that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind Respondent thereto.

AlliedSignal Inc.
NAME OF RESPONDENT

September 6, 1994
Date

James A. Schutt /eff
(signature)

James A. Schutt
(typed name of signatory)

Director - Manufacturing Services
(title of signatory)

15

CONSENT

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DeGraff Memorial Hospital
NAME OF RESPONDENT

09/09/94
Date

Thomas F. Schifferli
(signature)

Thomas F. Schifferli
(typed name of signatory)

Interim Chief Executive Officer
(title of signatory)

CONSENT

Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this Consent Order on behalf of Respondent certifies under penalty of perjury under the laws of the United States and of the State of Respondent's incorporation that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind Respondent thereto.

E. I. du Pont de Nemours and Company

September 12, 1994

NAME OF RESPONDENT

Date


(signature)

William E. Mancini

(typed name of signatory)

Remediation Program Manager

(title of signatory)

CONSENT

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FEDERAL-MOGUL CORPORATION
NAME OF RESPONDENT

September 8, 1994
Date


(signature)

George N. Bashara, Jr.
(typed name of signatory)

Vice President, Secretary & General Counsel
(title of signatory)

CONSENT

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Kimberly-Clark Corporation

September 2, 1994

NAME OF RESPONDENTDate

Kenneth A. Strassner
(signature)

Kenneth A. Strassner

(typed name of signatory)

Vice President -

Environment and Energy

(title of signatory)

CONSENT

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NABISCO, INC.

NAME OF RESPONDENT

September 2, 1994
Date

Robert K. DeVries
(signature)

Robert K. DeVries

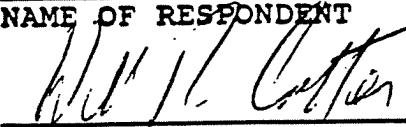
(typed name of signatory)

Vice President

(title of signatory)

CONSENT

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NATIONAL GRINDING WHEEL CO. LTD.September 8, 1994NAME OF RESPONDENTDate
(signature)William D. Cotter(typed name of signatory)Vice President(title of signatory)

CONSENT

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NIAGARA University

NAME OF RESPONDENT

9.8.94

Date

Donald H. Sog T.

(signature)

(typed name of signatory)

(title of signatory)

CONSENT

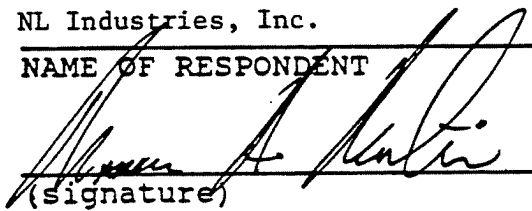
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NL Industries, Inc.

NAME OF RESPONDENT

9/15/94

Date


(signature)

Marcus A. Martin

(typed name of signatory)

Counsel

(title of signatory)

CONSENT


Respondent identified below has had an opportunity to confer with EPA regarding this Consent Order. Respondent hereby consents to the issuance of this Consent Order and to its terms. The individual executing this Consent Order on behalf of Respondent certifies under penalty of perjury under the laws of the United States and of the State of Respondent's incorporation that he or she is fully and legally authorized to agree to the terms and conditions of this Consent Order and to bind Respondent thereto.

Bell Aerospace Textron

NAME OF RESPONDENT

September 2, 1994

Date


(signature)Carl G. Buzawa

(typed name of signatory)

Vice President Division Counsel

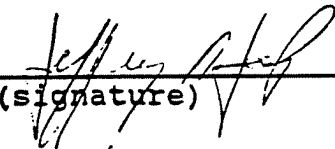
(title of signatory)

CONSENT

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Waste Management of New York, Inc.
NAME OF RESPONDENT

9/8/94
Date


(signature)

Jeffrey D. Teep
(typed name of signatory)

Group Environmental Counsel
(title of signatory)

NYSDEC - REG. 9
FOIL
REL. UNREL

1. This Administrative Order on Consent ("Order") is entered into by the above-captioned Respondents (hereinafter collectively referred to as "Respondents") and the Environmental Protection Agency ("EPA") pursuant to the authority vested in the President of the United States under Sections 104(a) and (b), 122(a) and 122(d)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. §9604(a), 9604(b), 9622(a), and 9622(d)(3), which authority was delegated to the Administrator of the EPA and duly redelegated to the Regional Administrators of EPA. Notice of this Order and the negotiations preceding its issuance were provided to the New York State Department of Environmental Conservation ("NYDEC").

EPA's FINDINGS

2. The Niagara County Refuse Disposal District Site (the "Site") occupies approximately 50 acres in the Town of Wheatfield, New York. The Site is located about three miles upstream of the City of Niagara Falls drinking water intake on the Niagara River. The Site is bounded by residences approximately 500 feet to the east of the Site along Witmer Road, wetlands to the north, agricultural area to the west and Conrail tracks and River Road (Route 265/384) to the south. The Niagara River flows generally east to west a short distance to the south of the Site, and is connected to the Site by an underground culvert (30 inches in diameter) which runs from the southern end of the Site's main drainage ditch into the river.

3. The Site is on the National Priorities List, 40 CFR Part 300, Appendix B, which has been issued pursuant to Section 105 (a)(8)(B) of CERCLA, 42 U.S.C. §9605(a)(8)(B).

4. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

5. Among the substances referred to in this Order, phenol, ethylbenzene, toluene, benzene, methylene chloride and arsenic are hazardous substances within the definition of "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14).

6. The Respondents are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21), and are either: (i) generators and/or transporters of hazardous substances disposed of at the Site; (ii) owner/operators of the Site at the time of disposal of hazardous substances at the Site; or the current owner of the Site. The Respondents are "responsible parties" under Section 107(a)(1),(2) and (3) of CERCLA, 42 U.S.C. §9607(a)(1),(2) and (3).

7. The Site was owned and operated by the Niagara County Refuse Disposal District from 1968 through 1976 when the landfill was closed. During the Site's operation the Site received household, industrial, commercial, institutional, and other waste. Pooling of water and chemicals, odors, unrestricted access, and leachate leaving the Site were recorded while the landfill was active. The Site was closed in 1976 at which time exposed refuse was covered with 20 inches of dirt, and it was graded. The Town of Wheatfield then acquired the Site.

8. Human exposure to the hazardous substances at the Site could result from direct contact with the substances. The Site is not fenced and is easily accessible. Local residents use the Site for recreation purposes including dirt bike riding, snowmobiling and target shooting. Since its installation the landfill cover has eroded causing wastes to be exposed in some northern areas. As deterioration of the soil cap progresses, the potential exists for large scale release of hazardous substances. Vegetative stress is visible in some areas north of the site, which appear to be receiving runoff from the Site.

9. The Site has been the focus of several investigations since 1980, involving multimedia sampling. These samplings were found to contain a number of substances defined as hazardous under 42 U.S.C. §9601(14). The sample results are summarized in the RI/FS Workplan attached hereto as Appendix I. Some of the results are summarized below.

10. On September 9, 1980, EPA collected several samples from drainage ditches on the Site and the discharge into the Niagara River. The sediment samples for these locations showed high levels of Bis (2-ethylhexyl) phthalate (2.3 to 6.9 mg/kg) and polycyclic aromatic hydrocarbons (0.017 to 3.2 mg/kg) as well as low levels of PCB's (0.08 to 0.32 mg/kg).

11. On March 18, 1981, Fred C. Hart Associates collected five surface water samples, three sediment samples and five soil samples in and around the Site. Surface water samples contained similar pollutants to samples taken by EPA in 1980 (phthalates, phenols, methylene chloride, and others). Soil samples contained phthalates, PAH's, PCB's and other compounds.

12. In 1981, four sediment and four water samples taken from drainage ditches by the NYSDEC were reported to contain copper, zinc, phenol, ethylbenzene, toluene and heptachlor. Also in 1981, Recra Research collected limited surface water samples at the Site which revealed high concentrations of phenols (34 mg/l).

13. In 1985, EA Science and Technology (EAST) on behalf of NYSDEC sampled and tested liquids from four monitoring wells installed within the landfill area. Elevated concentrations of volatile organic compounds (methylene chloride, toluene, benzene, 4methyl-2 pentene, ethylbenzene, and m-xylene) were detected. Metal concentrations (arsenic, barium, chromium, iron, lead, manganese and zinc) above New York State quality standards for class GA groundwater were also detected. Ignitable substances were detected in some of the drums sampled by EAST. Total cyanide was also detected at low levels.

14. Exposure to some of the contaminants identified at the site could result in adverse health effects.

15. The presence of hazardous substances in the soil and other media at and about the Site, and the leaching and migration of such hazardous substances, constitutes an actual and threatened "release" within the meaning of Section 101(22) of CERCLA, 42 U.S.C §9601(22).

16. In order to fully determine the nature and extent of the threat to human health and the environment presented by the release or threatened release of hazardous substances at the Site and to evaluate remedial alternatives, an RI/FS must be conducted in conformance with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR Part 300 and any amendments thereto, and CERCLA, including but not limited to Sections 104 and 121, 42 U.S.C. §§9604 and 9621.

III. Statement of Purpose

17. In entering into this Order, the mutual objectives of EPA and the Respondents herein, are: a) to determine the nature and extent of any threat to the public health, welfare or the environment caused by the release or threatened release of hazardous substances and/or pollutants or contaminants at the Site (Remedial Investigation); and b) to determine and evaluate potential remedies to prevent, mitigate or otherwise respond to the release or threatened release of hazardous substances or pollutants or contaminants at the Site (Feasibility Study). The activities conducted pursuant to this Order will be consistent with the National Contingency Plan, 40 C.F.R. §§ 300.68 (a)-(j), and any amendments thereto which are promulgated while this Order is in effect. EPA has determined that the Respondents are presently qualified to conduct the RI/FS within the meaning of §§104(a) and 122 of CERCLA, 42 U.S.C. §§9604(a) and 9622.

IV. ORDER

18. Based on the foregoing, it is hereby ordered and agreed that Respondents shall undertake an RI/FS for the Site in accordance with the requirements set forth below. All activities required by this Order shall be completed as soon as possible even though maximum time periods for their completion are set forth herein and in the Project Operations Plan ("POP") referred to below.

Remedial Investigation and Feasibility Study Work Plan

19. Respondents shall perform the RI/FS as set forth in the attached EPA-approved RI/FS Workplan and in conformance with the requirements of CERCLA and the NCP (and any amendments thereto) as well as applicable EPA guidance documents relating to the performance of RI/FSs under CERCLA.

Remedial Investigation

20. Within thirty (30) days of the effective date of this Order, Respondents shall submit to EPA for review and approval a detailed Project Operations Plan ("POP") for the performance of an RI of the Site. The POP shall be consistent with the purposes set out in paragraph 17 of this Order and shall be prepared in accordance with the requirements of CERCLA, the NCP (and any amendments thereto), applicable EPA guidance documents relating to the performance of the remedial investigations under CERCLA and the attached EPA-approved RI/FS Work Plan. The POP shall fully describe how those activities called for in the EPA-approved RI/FS Work Plan will be implemented and shall include but not necessarily be limited to the following items:

- a. a map depicting all sampling locations;
- b. the number and types of samples to be obtained at each sampling location;
- c. the overall management plan, including identification of contractors and subcontractors and their respective responsibilities for performance of the specific tasks set forth in the EPA-approved RI/FS Work Plan and the POP;
- d. a detailed schedule for performance of the specific tasks set forth in the EPA-approved RI/FS Work Plan and the POP;
- e. a Quality Assurance/Quality Control ("QA/QC") plan for all investigations to be performed, which shall be completed in accordance with Section 10 of the publication, Test Methods for Evaluating Solid Waste ("SW-846"), and which shall contain a provision for completing, within two (2) weeks of completion of all RI laboratory analyses, a QA/QC evaluation of all laboratory data, sampling and analytical procedures for each sample;

- f. a description of the chain of custody procedures to be followed, which shall conform to those set forth in Section 1.3 of SW-846;
- g. a Health and Safety Plan prepared in accordance with the EPA guidance document, Standard Operating Safety Guide, July, 1988, replacing November, 1984 edition;
- h. a Contingency Plan for dealing with occurrences including but not limited to fires, explosions and/or sudden releases of hazardous substances which may occur during Site activities; and
- i. the curricula vitarum of all professionals expected to participate in the RI, and a description of the responsibilities and the anticipated levels of effort of each such professional.

21. EPA will review and comment in writing on the POP. Within twenty (20) days of the Respondents' receipt of EPA's comments, Respondents shall amend the POP in accordance with EPA's comments, or as otherwise agreed to in writing by EPA, and submit the modified document to EPA.

22. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the POP, and EPA may modify it unilaterally. At such time as EPA determines that the POP is acceptable, EPA will transmit to Respondents a written statement to that effect.

23. Respondents shall perform the RI in conformance with the EPA-approved RI/FS Work Plan and POP. Respondents shall complete all activities specified in the approved POP and, in conformance with the schedule included in the POP, and shall submit to EPA for review and approval a draft report detailing the results of the RI ("Draft RI Report").

24. Upon receipt of the Draft RI Report, EPA will review the report and comment thereon in writing. Within thirty (30) days of receipt of EPA's comments, Respondents shall amend the Draft RI Report as required by those comments or as otherwise agreed upon by EPA, in writing and shall submit the amended report to EPA.

25. EPA's comments on the Draft RI Report may require Respondents to perform such additional investigatory work as EPA finds necessary. Such work (including any necessary work plans and reports) shall be performed by Respondents in conformance with a schedule approved by EPA.

26. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the Draft RI Report and any supplementary submissions prepared in accordance with paragraphs 24 and 25 above, and EPA may modify them unilaterally. At such time as EPA determines that the Draft RI Report is acceptable, EPA will transmit to Respondents a written statement to that effect and the report will be deemed the Final RI Report.

Feasibility Study

27. No later than fifteen (15) days after Respondents' receipt of a written statement from EPA indicating that the Draft RI report is acceptable, Respondents shall review the Feasibility Study ("FS") portion of the RI/FS Work Plan, determine whether the FS portion of the RI/FS Work Plan requires modification based on the results of the RI. Respondents shall either submit to EPA a revised FS Work Plan including any such modifications, or, if Respondents determine that no such modifications are necessary, so notify EPA in writing stating the reasons such modifications are unnecessary. The revised FS Work Plan shall provide for the performance of the FS in conformance with the requirements of CERCLA, the NCP (and any amendments thereto) as well as applicable EPA guidance documents relating to the performance of FSS under CERCLA. The FS Work Plan shall include a schedule for the performance of the tasks comprising the FS.

28. EPA will review and comment in writing on the FS Work Plan. Within thirty (30) days after receiving EPA's comments, Respondents shall amend the FS Work Plan as required by those comments or as otherwise approved by EPA and shall submit the amended document to EPA.

29. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the FS Work Plan, and EPA may modify it unilaterally. At such time as EPA determines that the revised FS Work Plan is acceptable, EPA will transmit to Respondents a written statement to that effect.

30. Upon receipt of EPA's written determination that the FS Work Plan is acceptable as provided above, Respondents shall perform the FS in conformance with the EPA-approved FS Work Plan or, if no revised FS Work Plan was submitted, the RI/FS Work Plan. Respondents shall submit to EPA for review a "Preliminary FS Report".

31. EPA will review and comment on the Preliminary FS Report. Within thirty (30) days of receipt of EPA's comments, Respondents shall amend that report to conform with such comments or as otherwise agreed upon by EPA and shall submit the modified report to EPA.

32. EPA's comments on the Preliminary FS Report may require that Respondents conduct such additional evaluations as EPA finds necessary. Such work (including any necessary work plans and reports) shall be performed in accordance with a schedule approved by EPA.

33. EPA remains the final arbiter in any dispute regarding the sufficiency or acceptability of the Preliminary FS Report and any supplementary submissions prepared in accordance with paragraphs 31 and 32 above, and EPA may modify them unilaterally. At such time as EPA determines that the Preliminary FS Report is acceptable, EPA will transmit to Respondents a written statement to that effect, and the report will be deemed the Draft FS Report.

34. Following submittal of the Draft FS Report, EPA will announce the availability of both the Final RI Report and the Draft FS Report to the public for review and comment. Following the public comment period (which may involve both written and oral comments), EPA will determine if the reports should be modified and will notify Respondents in writing of its determination. In the event that EPA determines that either or both of the reports needs to be modified, within thirty (30) days of receipt of EPA's determination, Respondents shall modify the report(s) as directed by EPA and shall submit the modified document(s) to EPA. Modifications may entail a change in the recommended remedial alternative.

35. EPA shall remain the final arbiter in any dispute regarding the sufficiency or acceptability of both the RI and the FS Reports, and EPA may modify them unilaterally.

36. EPA will determine and select the remedial alternative(s) to be implemented with respect to the Site.

Financial Assurance

37. At least seven (7) days prior to the performance of any work under this Order by Respondents' contractors and subcontractors, Respondents shall submit a certification that the contractors and subcontractors have adequate insurance coverage or indemnification for any liability which may result from the RI/FS activities to be conducted by them. For the purposes of this paragraph, adequate insurance shall be one million dollars per occurrence and five million dollars in the aggregate. Failure to obtain such insurance shall not be deemed a violation of this Order if Respondents demonstrate to EPA that they or their contractor(s) have made good faith efforts to obtain such insurance and it is not available.

Notification And Reporting Requirements

38. Respondents shall provide quarterly written progress reports to EPA by the tenth day of every quarter following the effective date of this Order. Notwithstanding the foregoing, Respondents shall, within ten (10) days of a request from EPA, submit an interim written progress report to EPA.

39. All work plans, reports and other documents required to be submitted to EPA under this Order shall be sent by certified or express mail, return receipt requested, to the following addressees:

3 copies: Chief, Site Compliance Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency
Region II
26 Federal Plaza, Room 747
New York, NY 10278

Attention: Project Officer, Niagara County
Refuse - Wheatfield Site

1 Copy Chief, New York Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency
Region II
26 Federal Plaza, Room 437
New York, NY 10278

Attention: Niagara County Refuse Attorney

3 copies: Bureau of Case Management
Division of Hazardous Waste Management
New York Department of Environmental Conservation
50 Wolf Road
Albany, NY 12233

Attention: Niagara County Refuse Case Manager

40. Respondents shall give EPA five (5) business days advance oral notice of the following expected activities under this Order: drilling, installation and testing of all monitoring wells and all on-site and off-site sampling activities.

41. All reports and other documents produced by Respondents and submitted to EPA in the course of implementing this Order shall be available to the public unless identified as confidential by Respondents and determined by EPA to merit confidential treatment, in accordance with applicable law. In addition, EPA may release all such documents to NYSDEC and NYSDEC may make those documents available to the public unless Respondents conform with appropriate New York law and regulations regarding confidentiality. No sampling and monitoring data or hydrological or geological data shall be considered confidential.

42. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Order. Respondents shall provide written notification to EPA of any circumstances which have caused or which Respondents believe are likely to cause a delay in performance. Such written notice: (a) shall be provided as soon as possible, but not later than seven (7) days after the date when Respondents learned or should have learned of the occurrence of such circumstances; (b) shall be accompanied by all available pertinent documentation, including, but not limited to, third-party correspondence; and (c) shall include (i) a description of the circumstances causing or potentially causing the delay; (ii) the actions (including pertinent dates) that Respondents have taken and/or plan to take to minimize any delay; and (iii) the date by which or time period within which Respondents propose to complete the delayed activities. Such notification does not relieve Respondents of any of their obligations under this Order.

43. All data, information and records created or maintained by Respondents or their contractors or consultants in connection with implementation of work under this Order, including but not limited to contractual documents (except those documents that are privileged under law), shall be made available to EPA on request and without delay. Further EPA shall be permitted to copy all such documents. In addition, no such data, information or records shall be destroyed for six (6) years after completion of the work required by this Order without either the express written approval of EPA or a written offer by the Respondent to provide such material to EPA, followed by EPA's written rejection of that offer.

44. a.) If Respondents, in good faith, disagree, in whole or in part with EPA's comments on the POP, the Draft RI Report, the FS Work Plan, the Preliminary FS Report, or (after the public comment period) the Final RI Report or Draft FS Report, Respondents shall notify EPA in writing of their objections and the bases therefor as soon as possible, but not later than fourteen (14) days after receipt of

EPA's comments. If Respondents so notify EPA within the aforesaid period, EPA shall provide a written response to Respondents setting forth EPA's position and the basis for that position. This written response shall be sent by the Director of the Emergency and Remedial Response Division of EPA Region II or by one of his superiors. Said response shall constitute the resolution of the dispute solely for the purposes of work required by this Order and shall be deemed to be incorporated into this Order.

b). If a dispute referred to above and its resolution cause a delay that makes it impossible for Respondents to meet a deadline set forth in or established pursuant to this Order, then that deadline shall be extended by a period of time not to exceed the delay resulting from the dispute and its resolution; provided that Respondents shall not be entitled to any such extension if EPA determines that Respondents' disagreement with EPA's comments is not in good faith or otherwise lacks a reasonable basis. Notwithstanding any of the foregoing, if Respondents request an extension of a deadline set forth in or established pursuant to this Order, and if EPA declines to grant such an extension, any delay caused solely by the resolution of such a dispute shall not entitle Respondents to an extension of time. In addition, notwithstanding any of the foregoing, EPA will be the final arbiter of all disputes under this Order and all work conducted pursuant to this Order. However, nothing in this paragraph shall affect any rights that Respondents may have to judicial review of EPA's actions or determinations under this Order except as provided by paragraph 73 of this Order. EPA and Respondents expressly reserve all rights and defenses that they may have pursuant to applicable law.

Respondents' Facility Coordinator, Other Personnel

45. Not later than five (5) business days after the effective date of this Order, the Respondents shall select an individual to be known as the Facility Coordinator and shall notify EPA in writing of the name, address, qualifications, job title and telephone number of the Facility Coordinator. The Facility Coordinator shall be responsible for oversight of the implementation of this Order. He or she shall have technical expertise sufficient to adequately oversee all aspects of the work contemplated by this Order. EPA correspondence to the Respondents with respect to this Order will be sent to the Facility Coordinator and the following:

- a). Daniel M. Darragh, Esq.
Goldome Center
One Fountain Plaza
Buffalo, N.Y. 14202;

b). Jack Litmer, Esq.
BP America
200 Public Square
39-5300-B
Cleveland, Ohio 44114-2375

46. Respondents and their employees, agents, contractors, and consultants shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Order.

47. All activities required of Respondents under the terms of this Order shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and local governments.

Access and Availability of Data

48. Respondents shall be responsible for obtaining in a timely fashion such access to the Site and any other premises where work under this Order is to be performed as is necessary for Respondents to carry out the requirements of this Order. This Order does not convey any rights of access to Respondents. In the event that the Respondents are unable to obtain access to the Site or any other premises where work under this Order is to be performed, Respondents shall notify EPA in writing of their inability to obtain access. EPA shall then, at its discretion and as appropriate, assist Respondents in obtaining access to the premises in question.

49. EPA and its designated representatives, including but not limited to their employees, agents, contractors and consultants, shall be permitted to observe the work carried out pursuant to this Order. Respondents shall provide EPA and its designated representatives access to and freedom of movement at the Site and any other properties owned and/or operated by Respondents where work under this Order is performed. Such access shall be permitted at all reasonable times, including but not limited to any time that work under this Order is being performed, for purposes of inspecting or observing Respondents' progress in implementing the requirements of this Order, verifying the information submitted to EPA by Respondents, or for any other purposes reasonably related to EPA oversight and implementation of this Order. With respect to any other premises where work under this Order is performed but which are not under the ownership or control of Respondents, Respondents shall not interfere with EPA access to such premises, and to the maximum extent practicable, shall support and assist EPA in obtaining access to such premises. Notwithstanding

the above, EPA hereby retains all of its inspection authority under CERCLA, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 et seq., and any other applicable statute. NYSDEC and its designated representatives shall be included among those eligible to be designated representatives of EPA under this paragraph.

50. Upon request by EPA, Respondents shall provide EPA or its designated representatives with duplicate and/or split samples of any material sampled in connection with the implementation of this Order. If EPA submits any such samples for analysis, the written results of such analysis will be made available to Respondents within a reasonable time after completion of the QA/QC evaluation of the data, if the data passes the QA/QC evaluation.

General Provisions

51. This Order shall apply to and be binding upon Respondents and Respondents' officers, directors, receivers, trustees, successors and assigns.

52. All actions performed by Respondents pursuant to this Order shall be carried out in conformance with the terms of this Order, all applicable federal, state, and local laws, regulations, and requirements, including, but not limited to, the NCP and any amendments thereto.

53. All work conducted pursuant to this Order shall be performed in accordance with prevailing professional standards.

54. Respondents shall be responsible for obtaining all necessary permits, licenses and other authorizations.

55. All reports, work plans and other writings required under the terms of this Order, upon approval by EPA, shall be deemed to be incorporated into this Order.

56. Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions by Respondents or Respondents' officers, directors, employees, agents, contractors, receivers, trustees, successors or assigns in carrying out any action or activity pursuant to this Order; nor shall the United States Government or any agency thereof be held out as a party to any contract entered into by Respondents in carrying out any activities pursuant to this Order.

57. To the extent permitted by law, Respondents agree to indemnify and hold harmless EPA and the United States Government, its agencies, departments, agents and employees, from all claims, causes of action, damages and costs of any

type or description by third parties for any injuries or damages to persons or property resulting from the negligent acts or omissions or intentional acts of Respondents, their officers, directors, officials, agents, servants, employees, receivers, trustees, successors or assigns, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Order by Respondents.

58. Nothing herein shall constitute or be construed as a satisfaction or release from liability for Respondents or Respondents' directors, officers, employees, agents, employees contractors, consultants, receivers, trustees, successors or assigns or for any other individual or entity.

59. Nothing contained in this Order shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

60. Respondents agree not to make any claims pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§9606(b)(2), 9611, 9612, either directly or indirectly, for reimbursement from the Hazardous Substance Superfund of costs incurred by them in complying with this Order.

61. Nothing in this Order shall be construed to constitute preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), and 40 CFR §300.25(d).

62. No informal advice, guidance, suggestions or comments by EPA shall be construed to relieve Respondents of any of their obligations under this Order.

63. Respondents' activities under this Order shall be performed within the time limits set forth herein, or otherwise established or approved by EPA, unless performance is delayed by events which constitute force majeure. For purposes of this Order, force majeure is defined as any event arising from forces beyond Respondents' control. Financial considerations shall not be considered circumstances beyond control of Respondents. When an event constituting force majeure occurs, Respondents shall perform the affected activities within a time period which shall not exceed the time provided in this Order together with a period of delay attributed to the force majeure; provided, however, that no deadline shall be extended beyond a period of time that is reasonably necessary in light of force majeure. Respondents shall verbally notify the EPA Project Officer identified in paragraph 39 above as soon as possible after discovering that circumstances have occurred or are likely to occur which may delay or prevent the performance of any activity required by this Order. If the Project Officer cannot be

reached, Respondents shall leave a message at his or her office. In addition, Respondents shall notify EPA, in writing, as soon as possible, but not later than seven (7) days after the date when Respondents become aware of the circumstances alleged to constitute force majeure. Such written notice shall be accompanied by all available pertinent documentation, including, but not limited to, third-party correspondence, and shall contain the following: 1) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond their control; 2) the actions (including pertinent dates) that Respondents have taken and/or plan to take to minimize any delay; and 3) the date by which or the time period within which Respondents propose to complete the delayed activities. Respondents' failure to timely and properly notify EPA as required by this paragraph shall render the remaining provisions of this paragraph null and void insofar as they may entitle Respondents to an extension of time. The burden of proving that an event constituting a force majeure has occurred shall rest with the Respondents.

64. This Order may be amended by mutual agreement of EPA and Respondents. Such amendments shall be in writing and shall have as their effective date that date on which such amendments are signed by EPA.

Reimbursement

65. Respondents agree to reimburse EPA for all oversight costs relating to this Order and/or the RI/FS of the Site that are incurred by the United States Government after the issuance of this Order. From time to time but no more than once a year EPA will transmit to Respondents an accounting of all such costs that were incurred during the previous year. These accountings will include, but not necessarily be limited to, the cost of oversight of Respondents' implementation of the requirements of this Order, the cost of an endangerment assessment and health assessment of the Site, and the cost of EPA's community relations activities with respect to the Site, and will include both direct and indirect costs. Respondents shall, within thirty (30) days of receipt of each such accounting, remit a cashier's or certified check for the amount of those costs, made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund
P.O. Box 371003M
Pittsburgh, PA 15251

Such payments shall contain a reference to the docket number of this Order and shall be accompanied by a letter of explanation including the names and addresses of Respondents, the name of the Site (the Niagara County Refuse - Wheatfield Site),

and the EPA Region number (EPA Region II); a copy of the letter shall be sent to the first two addressees listed in paragraph 39 above. In the event of a good faith dispute between Respondents and EPA concerning whether the incurred costs are inconsistent with the NCP or otherwise impermissible under law, EPA and Respondents shall attempt to informally resolve the dispute for a period of 30 days from Respondents notification to EPA of the dispute. It shall not be a violation of this Order for Respondents to decline to pay the specific costs in dispute. Upon resolution of the dispute, Respondents shall pay any sums determined to be owed within 30 days of such resolution, and such payment shall include interest from the date of EPA's original demand. Respondents must raise any such dispute by the date payment would otherwise be due hereunder. In the event the parties cannot resolve the dispute among themselves, EPA may at any time after the informal 30 day dispute resolution period file a civil action to seek reimbursement of its claims.

Enforcement

66. Failure of Respondents to comply with any of the requirements of this Order may result in EPA taking the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604.

67. a) If Respondents fail, without prior EPA approval, to comply with the time limits and deadlines set forth in Appendix II of this order, "Timetable of Major Milestones", and such failure is not excused under the terms of paragraph 63 above, the Respondents shall pay a stipulated penalty to EPA in the amount indicated below for each day of noncompliance:

<u>Days After Required Date</u>	<u>Stipulated Penalty</u>
5 to 10 days	\$4000.00/day
11 to 20 days	\$8000.00/day
21 to 90 days	\$12000.00/day

Any such penalty shall accrue as of the fifth day after the applicable deadline has passed, and shall continue to accrue until the noncompliance is corrected. Such penalties shall be due and payable ten (10) days following receipt of a written demand by EPA and shall be due and payable every thirtieth day thereafter. Payment of any such penalty to EPA shall be made by cashier's or certified check made payable to the "Hazardous Substance Superfund," with a notation of the docket number of this Order, and shall be mailed to the address set forth in paragraph 65 above. A letter stating the basis for the penalties, the names and addresses of Respondents,

the name of the Site, and the EPA Region number shall accompany each such payment; a copy of the letter shall be mailed to the first two addressees listed in paragraph 39 above.

b). If Respondents accrue liability for stipulated penalties hereunder due to Respondents' delays in timely completing Tasks #1 through #8 in the "Timetable of Major Tasks (Milestones)" in Appendix II hereof, such liability shall be waived if Respondents achieve completion of Task #8 (final task) in Appendix 2 by the date such completion would have been required in the absence of delays which gave rise to such stipulated penalty liability.

68. Notwithstanding any other provision of this Order, EPA reserves its right to bring an action against Respondents (or any other responsible parties) pursuant to Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any costs incurred in oversight of Respondents' implementation of this Order, and any other response costs incurred by the United States Government with respect to the Site.

69. Notwithstanding any other provision of this Order, EPA reserves its right to take enforcement actions against Respondents (or any other responsible parties), including, but not limited to, actions for monetary penalties for any violation of law or this Order. Such enforcement actions may include, though need not be limited to, actions pursuant to Sections 107(c)(3) and/or 109 of CERCLA, 42 U.S.C. §§9607(c)(3) and 9609.

70. Nothing herein shall preclude EPA from taking any additional enforcement actions and/or additional removal or remedial actions as it may deem necessary or appropriate for any purpose, including, but not limited to, the investigation, prevention or abatement of a threat to the public health, welfare, or the environment arising from conditions at the Site.

Termination and Satisfaction

71. The provisions of this Order shall be deemed satisfied upon Respondents' receipt of written notice from EPA that all of the terms of this Order, including any additional tasks that EPA has determined to be necessary, have been satisfactorily carried out.


Effective Date and Effect of Consent

72. This Order shall become effective on the third business day after it is signed by the Regional Administrator of EPA Region II, and served upon Respondents by express mail and all times for the performance of actions or activities to be performed under this Order shall be calculated from said effective date.

73. The Respondents agree to undertake all actions required of them by the terms of this Order. Solely for the purpose of this Order, Respondents consent and agree not to contest the authority and the jurisdiction of the Regional Administrator of EPA Region II to issue this Order and also agree not to contest the validity or terms of this Order in any proceeding to enforce its provisions. Provided, however, the Respondents do not admit, concede or acknowledge the determinations, allegations, findings of fact and conclusions of law made by EPA in or pursuant to the Order and expressly reserve the right to contest any such allegations, findings, determinations and conclusions in any proceeding other than in a proceeding brought by EPA to enforce this Order. Furthermore, except as provided in paragraphs 60 and 61 above, Respondents do not, by signing this Order, waive any rights they may have to assert claims under CERCLA against any person or non-participating potentially responsible party, as defined in Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

IT IS SO ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY



William J. Muzzynski, P.E.
Acting Regional Administrator
U.S. Environmental Protection Agency
Region II

3-30-89
DATE