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

UNITED STATES OF AMERICA Plaintiff, v. Wilhelm Enterprises Corporation; New York State Electric & Gas Corporation; Jimcar Development, Inc.; James Dill; Brown Shoe Company, Inc.; Seton Company; GST AutoLeather; Prime Tanning Company, Inc.; Viad Corporation; ConAgra Grocery Products Company, Inc.; Leucadia National Corporation; Beggs & Cobb Corporation; Wolverine Worldwide, Inc.; Genesco, Inc.; Albert Trostel & Sons Co.; Blackhawk Leather Ltd.; Eagle Ottawa, LLC; S.B. Foot Tanning Company; and Horween Leather Company, Defendants.	Civil Action No. 1:08-cv-00840 (RJA) **CONSENT DECREE**

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I. BACKGROUND

A. Plaintiff United States of America ("Plaintiff" or "United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in the above-captioned action, alleging that the defendants named therein, all of which have entered into this Consent Decree, are liable as current and former owners and operators of, and as arrangers for disposal of hazardous substances at, the Peter Cooper Landfill Superfund Site in the Village of Gowanda, Cattaraugus County, New York ("Site"), 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 United States Department of Justice ("DOJ") for response actions at the Site, 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 ("State") on December 31, 2005 of negotiations with potentially responsible parties ("PRPs") 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 U.S. Department of the Interior and the National Oceanic and Atmospheric Administration on December 31, 2005, of negotiations with PRPs regarding the release of hazardous substances at or from the Site that may have resulted in injury to the natural resources

under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. Settling Defendants have entered into a separate agreement among themselves under which they have divided into two groups, "Performing Settling Defendants" and "Non-Performing Settling Defendants," as defined in Paragraph 4 below. Under Settling Defendants' agreement, each such group has agreed to allocate the total payment owed to EPA pursuant to this Consent Decree as specified in Section XVI (Payments for Response Costs).

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

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the *Federal Register* on April 6, 1998.

H. In 2000, in response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, certain of the PRPs commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. PRPs completed the RI Report for the Site in November, 2003, and the FS Report for the Site in June 2005.

J. 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 30, 2005, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral

comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Emergency and Remedial Response Division ("ERRD") Division Director, EPA Region II, based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), issued on September 30, 2005, on which the State had a reasonable opportunity to review and comment. The ROD includes requirements, *inter alia*, for capping the landfill at the Site, collection of leachate, on-site or off-site treatment of collected leachate, installation of a groundwater diversion system to limit groundwater migration through the landfill (unless this component of the remedy is determined to be unnecessary by EPA during remedial design), excavation of three areas of elevated soil contamination (a/k/a "hot spots") and consolidation of contaminated soils beneath the landfill cap, and institutional controls. The ROD includes EPA's explanation of any significant differences between the final plan and the proposed plan as well as a summary of EPA responses to public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Performing Settling Defendants, as defined in Paragraph 4, if conducted in accordance with the requirements of this Consent Decree, including its appendices.

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

N. 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, 1345, and 42 U.S.C. §§ 9606, 9607, 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. Performing 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 Performing Settling Defendant with respect to the Site or the

Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Performing 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. Performing 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 Performing Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this 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 herein, 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, all appendices (listed in Section XXIX) attached hereto and incorporated herein, all EPA-approved work plans developed hereunder and incorporated herein, and any modifications thereto in accordance with this Decree. In the event of conflict between this Decree and any appendix or plan, 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.

"Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 106.

"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 (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), and XV (Emergency Response), and to Paragraph 89 (Work Takeover) of Section XXI. Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Performing Settling Defendants have agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from September 16, 2007 to the Effective Date of this Consent Decree.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between September 16, 2007 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

"Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

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

"Non-Performing Settling Defendants" shall mean the Settling Defendants identified in Appendix F.

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

"Owner Settling Defendants" shall mean the Settling Defendants 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 Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through September 15, 2007, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. §9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD and the SOW.

"Performing Settling Defendants" shall mean the Settling Defendants identified in Appendix G, including all Settling Defendants except Non-Performing Settling Defendants.

"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 30, 2005 by the ERRD Director, EPA Region II, and all attachments thereto. The ROD is attached as Appendix A.

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

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Performing 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 developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

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

"Settling Defendants" shall mean all defendants named in the complaint that have entered into this Consent Decree, including those Parties identified in Appendix D .

"Site" shall mean the Peter Cooper Landfill Superfund Site, encompassing approximately 26 acres, located between Palmer Street and the Cattaraugus Creek, in the Village of Gowanda,

Cattaraugus County, New York, and depicted generally on the map attached as Appendix C, and legally described in Appendix H, Exhibit A..

"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 O&M at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Performing 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); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Performing Settling Defendants are required to perform under this Consent Decree (including, without limitation, the securing and implementation of Institutional Controls), except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

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

from payments by all Settling Defendants, and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants

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

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

Consent Decree applicable to them, the remaining Non-Performing Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law

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

8. Permits.

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

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

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

9. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by the Owner Settling Defendants that is located within the Site, within 15 days after the entry of this Consent Decree, the Owner Settling Defendants shall submit to EPA for review and approval a notice to be filed with the Recorder's Office or other appropriate office, Cattaraugus County, State of New York, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on September 30, 2005, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notices shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendants shall record the notices within 10 days of EPA's approval of the notices. The Owner Settling Defendants shall provide EPA with a certified copy of the recorded notices within 10 days of recording such notices.

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendants conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Owner Settling Defendant(s) conveying the interest shall also give written notice to EPA and the

State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Defendants' obligations under this Consent Decree, including, but not limited to, their obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendants. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendants to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY PERFORMING SETTLING DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Performing Settling Defendants pursuant to Sections VI (Performance of the Work by Performing Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Performing Settling Defendants' Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Performing Settling Defendants, as the "practice of engineering" is defined at Section 7201 of the New York State Education Law, must comply with all applicable New York State legal requirements regarding the practice of professional engineering with the State of New York, including, but not

limited to, all applicable requirements of the New York State Education Law and Articles 15 and 15-A of the Business Corporations Law. Within 10 days after the lodging of this Consent Decree, Performing Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Performing Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with consistent with the Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Performing Settling Defendants propose to change a Supervising Contractor, Performing 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 Performing Settling Defendants in writing. Performing Settling Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. 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. Performing 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 Performing Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Performing Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Design.

a. Within 60 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Performing 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" or "RD 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 for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 60 days after EPA's issuance of an authorization to proceed, the Performing Settling Defendants shall also submit to EPA and the State 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. 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, plans and schedules for the completion of: (1) design sampling and analysis plan

(including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); (2) a Pre-design Work Plan; (3) a preliminary design submittal; (4) an intermediate design submittal, if required by EPA; (5) a pre-final/final design submittal; and (6) a Construction Quality Assurance Plan. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

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, Performing Settling Defendants shall implement the Remedial Design Work Plan. The Performing 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 XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Performing Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal, if required by EPA or if independently submitted by the Performing Settling Defendants, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) O&M Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during 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 30 days after the approval of the final design submittal, Performing Settling Defendants shall award a contract for Remedial Action at the Site. Within 60 days after the award of the Remedial Action contract, Performing Settling Defendants shall submit to EPA 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 and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Performing Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) a groundwater monitoring plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the O&M Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team including, but not limited to, the Supervising Contractor; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal.

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

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

14. Modification of the SOW or Related Work Plans.

a. Prior to EPA's acceptance of Performing Settling Defendant's certification of completion of the Work pursuant to Section XIV, if EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require the Performing Settling Defendants to incorporate such modification in the SOW and/or such work plans and to perform the modified work. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 14 and Paragraph 52 only, the "scope of the remedy selected in the ROD" is: (i) the construction of a cap on the landfill which satisfies, or is the performance equivalent of, the New York State standards contained in 6 NYCRR Part 360; (ii) collection of leachate; (iii) on-site or off-site treatment of collected leachate; (iv) installation of a groundwater diversion system to limit groundwater migration through the landfill (unless this component of the remedy is determined to be unnecessary by EPA during remedial design); (v) excavation of three areas of elevated soil contamination and consolidation of contaminated soils beneath the landfill cap; (vi) institutional controls for protection of the remedy and to prevent the use of groundwater at the Site for potable purposes; and (vii) a long-term monitoring program.

c. If Performing Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 70 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

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

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

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

16. a. Performing 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 identified pursuant to Section XII 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.

b. The Performing 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 Performing 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.

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

d. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Performing Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440. Performing Settling Defendants shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

17. Periodic Review. Performing Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

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

19. Opportunity To Comment. Performing Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to

comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Performing Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Performing Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 85 or Paragraph 86 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Performing Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 85 or Paragraph 86 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 70 (record review).

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

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Performing Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with the UFP-QAPP, Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005,

and subsequent amendments to such guidelines upon notification by EPA to Performing Settling Defendants of such amendment, and with applicable guidance provided on the EPA Region II's Quality Assurance Homepage (http://www.epa.gov/region02/desa/hsw/sops.htm) or alternate test methods approved by EPA with respect to such sampling, analysis, and data assessment and monitoring. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Performing Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Settling Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Settling Defendants in implementing this Consent Decree. In addition, Performing Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Performing Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" (ILMO5.3, March 2004) and the "Contract Lab Program Statement of Work for Organic Analysis," (OLMO4, March 2003), and any amendments made thereto during the course of the implementation of this Decree. Performing 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. Performing Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995) and the UFP-QAPP, Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005, or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Performing Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. For any analytical work performed under this Consent Decree, including but not limited to that performed in a fixed laboratory, in a mobile laboratory, or in on-site screening analyses, Performing Settling Defendants must submit to EPA, within 30 days after acceptance of the analytical results, a "Non-CLP Superfund Analytical Services Tracking System" form with respect to each laboratory utilized during a sampling event. Each such form shall be submitted to the EPA Project Coordinator, and a copy of the form and transmittal letter shall also be sent to:

Regional Sample Control Center Coordinator (RSCC)
USEPA - Division of Environmental Science and Assessment
MS-215
2890 Woodbridge Avenue
Edison, New Jersey 08837

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

notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Performing Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Performing Settling Defendants' implementation of the Work.

24. Performing Settling Defendants shall submit to EPA five copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

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

IX. Access and Institutional Controls

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

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

(1) monitoring the Work;

(2) verifying any data or information submitted to the United States;

(3) conducting investigations relating to contamination at or near the Site;

(4) obtaining samples;

(5) assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(7) implementing the Work pursuant to the conditions set forth in Paragraph 89 (Work Takeover);

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

(9) assessing Performing Settling Defendants' compliance with this Consent Decree; and

(10) determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using such property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, (i) not installing or operating wells at the Site for extraction of groundwater for potable purposes, and (ii) after the construction of the landfill cap, the leachate seep collection system, on-site treatment system (if

applicable), groundwater diversion structure (if applicable), gas venting system, and bank stabilization is completed and except as required for O&M, not engaging in any digging, excavation, construction or other activities that could or would interfere with, or adversely affect, the integrity or protectiveness of the cap, the bank stabilization, or any of the above systems that are installed; and

c. execute and record in the Recorder's Office or Registry of Deeds or other appropriate land records office of Cattaraugus County, State of New York , an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; (iii) the Performing Settling Defendants and their representatives; and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix H, that is enforceable under the laws of the State of New York; and

(2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and

clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder's Office or Registry of Deeds or other appropriate office of Cattaraugus County. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the DOJ Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

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

a. an agreement to provide access thereto for Performing Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree;

b. an agreement, enforceable by the Performing Settling Defendants and the United States, to refrain from using such property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, those set forth in Paragraph 26(b) of this Consent Decree; and

c. the execution and recordation in the Recorder's Office or Registry of Deeds or other appropriate land records office of Cattaraugus County, State of New York, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; (iii) the Performing Settling Defendants and their representatives; and/or (iv) other appropriate grantees. If EPA requests, within 45 days of the date of EPA's request, Performing Settling Defendants shall submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix H, that is enforceable under the laws of the State of New York, and

(2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and

clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Performing Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances). Within 15 days of EPA's approval and acceptance of the easement and the title evidence, Performing Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement shall be recorded with the Recorder's Office or Registry of Deeds or other appropriate office of Cattaraugus County. Within 30 days of the recording of the easement, Performing Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the DOJ Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

28. For purposes of Paragraphs 26 and 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 26(a) or 27(b) of this Consent Decree are not obtained within 45 days of the Effective Date of this Consent Decree, (b) any access easements or restrictive easements required by Paragraph 26(c) of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of EPA's request for easement and evidence of title pursuant to Paragraph 26(c), or (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph 26(c)(1) or Performing Settling Defendants are unable to obtain an agreement pursuant to Paragraph 26(c)(1)

from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within 45 days of the Effective Date of this consent decree, such Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that such Settling Defendants have taken to attempt to comply with such Paragraph. The United States may, as it deems appropriate, assist such Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Performing Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Performing Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

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

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Performing 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 Performing 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 Performing Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Performing Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Performing Settling Defendants pursuant to Paragraph 52(b) of Section XIV (Certification of Completion of Remedial Action) and quarterly, semi-annually, or annually thereafter, as determined in writing by EPA, until EPA notifies Performing Settling Defendants pursuant to Paragraph 53(b) of

Section XIV (Certification of Completion of Work). If requested by EPA, Performing Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

32. The Performing 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.

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

34. Within 20 days of the onset of such an event, Performing Settling Defendants shall furnish to Plaintiff a written report, signed by the Performing Settling Defendants' Project Coordinator identified pursuant to Section XII, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Performing Settling Defendants shall submit a report setting forth all actions taken in response thereto.

35. Performing Settling Defendants shall submit all plans, reports, and data required by Section VI, above, the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in Section VI, above, the SOW and such approved plans. Performing Settling Defendants shall simultaneously submit copies of all such plans, reports and data to the State in accordance with the requirements of Section XXVI, below. Upon request by EPA Performing Settling Defendants shall submit in electronic form all portions of any report or other deliverable Performing Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, 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 Performing Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Performing Settling Defendants at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would

cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

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

39. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Performing Settling Defendants shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Performing Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-

deficient portion of a submission shall not relieve Performing Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

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

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Performing Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Performing Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, or if the Performing Settling Defendants do not challenge EPA's disapproval or modification by invoking the dispute resolution procedures set forth in Section XIX, stipulated penalties, as provided in Section XX, shall accrue for such violation from the date on which the initial submission was originally required.

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

to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

43. Within 20 days of lodging this Consent Decree, Performing 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 five working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Performing Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Performing Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. 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.

45. The Performing Settling Defendant's Project Coordinator shall be available to meet with EPA at EPA's request.

XIII. PERFORMANCE GUARANTEE

46. In order to ensure the full and final completion of the Work, Performing Settling Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the amount of $4,000,000 [the United States will consider changing this to $2,680,000 upon the execution of an appropriate agreement between the PRPs and Village providing for off-site treatment] (hereinafter, the "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institutions (i) that has the authority to issue letters of credit and (ii) whose letter of credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration by one or more Performing Settling Defendants that each such Performing Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Performing Settling Defendant; or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Performing Settling Defendant; *provided, however*, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

47. Performing Settling Defendants have selected, and EPA has approved, as an initial Performance Guarantee, the establishment of a trust fund pursuant to Paragraph 46(c), established by a trust fund agreement ("Trust Fund Agreement") in substantially the same form as that set forth in Appendix I hereto. Within 10 days after entry of this Consent Decree, Performing Settling Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee legally binding in a form substantially identical to the document attached hereto as Appendix I, and such Performance Guarantee shall thereupon be fully effective. Within 30 days of entry of this

Consent Decree, Performing Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee legally binding to the EPA Financial Management Officer in accordance with Section XXVI ("Notices and Submissions") of this Consent Decree and to the United States and EPA as specified in Section XXVI.

48. If at any time during the effective period of this Consent Decree, the Performing Settling Defendant(s) provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 46(e) or Paragraph 46(f) above, such Performing Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to: (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual resubmission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (iii) the notification of EPA within 90 days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate" "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

49. In the event that EPA determines at any time that a Performance Guarantee provided by any Performing Settling Defendant pursuant to this Section is inadequate, otherwise

no longer satisfies the requirements set forth in this Section, or is substantially higher than is necessary to satisfy the requirements set forth in this Section, whether due to a change in the estimated cost of completing the Work or for any other reason, or in the event that any Performing Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate, otherwise no longer satisfies the requirements set forth in this Section, or is substantially higher than is necessary to satisfy the requirements set forth in this Section, whether due to a change in the estimated cost of completing the Work or for any other reason, Performing Settling Defendant(s), within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of any Performing Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 46 of this Consent Decree that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee, Performing Settling Defendants shall follow the procedures set forth in Paragraph 51(b)(2) of this Consent Decree. Performing Settling Defendants' inability to establish or maintain a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Performing Settling Defendants to complete the Work in strict accordance with the terms hereof.

50. The commencement of any Work Takeover pursuant to Paragraph 89 of this Consent Decree shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraph 46(a), (b), (c), (d), or (f), and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work

Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 46(e), Performing Settling Defendant(s) shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount, as determined by EPA, up to but not exceeding the estimated cost of the remaining Work to be performed as of such date.

51. Modification of Amount and/or Form of Performance Guarantee

a. Reduction of Amount of Performance Guarantee. If Performing Settling Defendants believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 46 above, Performing Settling Defendants may, on any anniversary date of the Effective Date of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Performing Settling Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Performing Settling Defendants shall follow the procedures set forth in Paragraph 51(b)(2) of this Consent Decree. If EPA decides to accept such a proposal, EPA shall notify the petitioning Performing Settling Defendants of such decision in writing. After receiving EPA's written acceptance, Performing Settling Defendants may reduce the amount of the Performance

Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Performing Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 48 or 51(b) of this Consent Decree.

b. Change of Form of Performance Guarantee

(1) If, after entry of this Consent Decree, Performing Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Performing Settling Defendants may, on any anniversary date of the Effective Date of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 51(b)(2) of this Consent Decree. Any decision made by EPA on a petition submitted under this Paragraph 51(b)(1) shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Performing Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Performing Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee

must satisfy all requirements set forth or incorporated by reference in this Section. Performing Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Financial Management Officer in accordance with Section XXVI (Notices and Submissions) of this Consent Decree and to the United States and EPA as specified in Section XXVI. EPA shall notify Performing Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this subparagraph. Within 10 days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Performing Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the instruments or other documents submitted to EPA as part of the approved proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Performing Settling Defendants shall submit all finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Financial Management Officer within 30 days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI (Notices and Submissions) of this Consent Decree and to the United States and EPA as specified in Section XXVI.

c. Release of Performance Guarantee. If Performing Settling Defendants receive written notice from EPA in accordance with Paragraph 52 hereof that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Performing Settling Defendants in writing, Performing Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Performing Settling Defendants shall not release, cancel, or discontinue any

Performance Guarantee provided pursuant to this Section except as provided in this subparagraph. In the event of a dispute, Performing Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

XIV. CERTIFICATION OF COMPLETION

52. Completion of the Remedial Action.

a. Within 90 days after Performing Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants and EPA. If, after the pre-certification inspection, the Performing Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and the Performing 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 Performing Settling Defendant or the Performing Settling Defendants' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Performing Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14(b). EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (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 performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Performing Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the

Remedial Action shall not affect Performing Settling Defendants' obligations under this Consent Decree.

53. Completion of the Work.

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

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

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

consistent with the Consent Decree and the SOW or require the Performing Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

54. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Settling Defendants shall, subject to Paragraph 55, 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 Performing Settling Defendants shall notify the Chief of the Response and Prevention Branch, EPA Region II, at (732) 321-6656 or, if such person or his/her delegee is unavailable, the EPA Region II Emergency 24-hour Hot Line at (732) 548-8730. Performing 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 Performing Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Performing Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

55. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiffs).

XVI. PAYMENTS FOR RESPONSE COSTS

56. Payments for Past Response Costs.

a. Within 30 days of the Effective Date, Performing Settling Defendants shall pay to EPA $1,157,519, and Non-Performing Settling Defendants shall pay to EPA $216,481, in payment for Past Response Costs. The payments shall be made by FedWire Electronic Funds Transfer ("EFT") to the DOJ account in accordance with current EFT procedures, referencing USAO File Number ____, EPA Site/Spill ID Number 02GA, and DOJ Case Number 90-11-2-06887. The payments shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Western District of New York following lodging of the Consent

Decree. Any payments received by DOJ after 4:00 p.m. (Eastern Time) will be credited on the next business day.

b. At the time of each such payment, Performing Settling Defendants and Non-Performing Settling Defendants, respectively, shall send notice that their payment has been made to the United States, to EPA and to the EPA Financial Management Officer in accordance with Section XXVI (Notices and Submissions).

c. Of the total amount ($1,374,000) to be paid by Settling Defendants pursuant to Paragraph 56(a), $1,124,000 shall be deposited in the EPA Hazardous Substance Superfund and $250,000 shall be deposited in the Peter Cooper Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

57. Payments for Future Response Costs.

a. Performing Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Performing Settling Defendants billings for such costs. The billings will be accompanied by printouts of cost data from EPA's Superfund Cost Organization Recovery Package Imaging Online System and from DOJ's financial management system. Performing Settling Defendants shall make all payments within 30 days of the date of each bill requiring payment, except as otherwise provided in Paragraph 58. Performing Settling Defendants shall make all payments required by this Paragraph via EFT to Federal Reserve Bank of New York, New York, New York, as follows:

To make payment via EFT, Performing Settling Defendants shall provide the following information to their bank:

- Amount of payment
- Title of Federal Reserve Bank account to receive the payment (Field Tag 4200): **D 68010727 Environmental Protection Agency**
- Account code for Federal Reserve Bank Account receiving the payment: **68010727**
- Federal Reserve Bank ABA Routing Number: **021030004**
- Names of Performing Settling Defendants
- DOJ Case Number: **90-11-2-06887**
- Site/spill identifier: **02GA**

Along with this information, Performing Settling Defendants shall instruct their bank to remit payment in the required amount via EFT to EPA's account with Federal Reserve Bank.

To ensure that Performing Settling Defendants' payment is properly recorded, Performing Settling Defendants shall send a letter, within one week of the EFT, which references the date of the EFT, the payment amount, the name of the site, and the case number to each of the following:

George Pavlou, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II
290 Broadway,19th floor
New York, NY 10007-1866

George A. Shanahan
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region II
290 Broadway, 17th floor
New York, NY 10007-1866

United States Environmental Protection Agency

26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, Ohio 45268
Attn: Richard Rice
E-mail: Rice.Richard@epa.gov and AcctsReceivable.CINWD@epa.gov

b. The amounts to be paid by Performing Settling Defendants pursuant to Subparagraph 57(a) shall be deposited in the Peter Cooper Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

58. Performing Settling Defendants may contest payment of any Future Response Costs under Paragraph 57 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 receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Performing Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 57. Simultaneously, the Performing 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 Performing Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions) a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well

as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Performing Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within five days of the resolution of the dispute, the Performing Settling Defendants shall pay the sums due, with accrued interest (notice of the payment shall be accompanied by a bank statement showing such interest), to the United States in the manner described in Paragraph 57. If the Performing Settling Defendants prevail concerning any aspect of the contested costs, the Performing Settling Defendants shall pay that portion of the costs plus associated accrued interest (notice of the payment shall be accompanied by a bank statement showing such interest) for which they did not prevail to the United States in the manner described in Paragraph 57; Performing Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Performing Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

59. In the event that the payments required by Subparagraph 56(a) are not made within 30 days of the Effective Date or the payments required by Paragraph 57 are not made within 30 days of the Performing Settling Defendants' receipt of the bill, Performing Settling Defendants or Non-Performing Settling Defendants as applicable (*i.e.*, whichever does not make its required payment within the applicable 30-day period), shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of payment. Payments of Interest

made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XX. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 57.

XVII. INDEMNIFICATION AND INSURANCE

60. Performing Settling Defendants' Indemnification of the United States

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Performing 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, negligent or other wrongful acts or omissions of Performing 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 Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Performing Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Performing 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 Performing Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Performing Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Performing Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 60(a), and shall consult with Performing Settling Defendants prior to settling such claim.

61. Performing 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 Performing Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Performing Settling Defendants shall indemnify and hold harmless the United States 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 Performing 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.

62. No later than 15 days before commencing any on-site Work, Performing Settling Defendants shall submit to EPA documentation demonstrating that its contractors and/or subcontractors maintain, and are required by contract to continue to maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Subparagraph 52(b) of Section XIV (Certification of Completion), comprehensive general liability insurance with limits of $5 million, combined single limit, and automobile liability insurance with limits of $2 million, combined single limit, naming the United States as an

additional insured. In addition, for the duration of this Consent Decree, Performing Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Performing Settling Defendants shall provide, or ensure that their contractors and/or subcontractors provide, to EPA certificates of such insurance and a copy of each insurance policy. Performing Settling Defendants shall resubmit, or ensure that their contractors and/or subcontractors resubmit, such certificates and copies of policies each year on the anniversary of the Effective Date. If Performing 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, Performing Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

63. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Performing Settling Defendants, of any entity controlled by Performing Settling Defendants, or of Performing Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Performing Settling Defendants' best efforts to fulfill the obligation. The requirement that the Performing 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.

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

Performing Settling Defendants, or Performing Settling Defendants' contractors knew or should have known.

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

66. If the Performing Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Performing 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 Performing Settling Defendants complied with the requirements of Paragraphs 63 and 64, above. If Performing Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Performing Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

67. 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 Performing Settling Defendants that have not been disputed in accordance with this Section. In addition, notwithstanding any other provision of this Consent Decree, Performing Settling Defendants may not invoke the dispute resolution procedures of this Consent Decree more than once regarding the same issue.

68. 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.

69. Statements of Position.

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, Performing 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 Performing Settling Defendants. The

Statement of Position shall specify the Performing Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 70 or Paragraph 71.

b. Within 14 days after receipt of Performing Settling Defendants' Statement of Position, EPA will serve on Performing Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 70 or 71. Within 14 days after receipt of EPA's Statement of Position, Performing Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Performing Settling Defendants as to whether dispute resolution should proceed under Paragraph 70 or 71, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Performing 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 70 and 71.

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

Performing Settling Defendants regarding the validity of the ROD's provisions or the appropriateness of the ROD remedy.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The ERRD Director, EPA Region II, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 70(a). This decision shall be binding upon the Performing Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 70(c) and (d).

c. Any administrative decision made by EPA pursuant to Paragraph 70(b). shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Performing Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Performing Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Performing Settling Defendants shall have the burden of demonstrating that the decision of the ERRD Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 70(a).

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

a. Following receipt of Performing Settling Defendants' Statement of Position submitted pursuant to Paragraph 69, the ERRD Director will issue a final decision resolving the dispute. The ERRD Director's decision shall be binding on the Performing Settling Defendants unless, within 10 days of receipt of the decision, the Performing Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Performing Settling Defendants' motion.

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

72. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Performing Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 80. 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 Performing Settling Defendants

do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

73. a. Performing Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 74 and 75 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Performing Settling Defendants shall include making their payments pursuant to Paragraphs 56(a) and 57(a) of Section XVI (Payments for Response Costs) and completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

b. Non-Performing Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 74(a) to the United States for failure to comply with the requirements of this Consent Decree applicable to them. "Compliance" by Non-Performing Settling Defendants shall include making their payment pursuant to Paragraph 56(a) of Section XVI (Payments for Response Costs).

74. a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements of this Consent Decree, except as set forth in Subparagraph 74.b, below:

Penalty Per Violation Per Day	Period of Noncompliance
$4,000	1st through 14th day
$8,000	15th through 30th day
$16,000	31st day and beyond

b. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements of Section VIII (Quality Assurance, Sampling, and Data Analysis), and failure to submit timely or adequate reports pursuant to Section X:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$3,000	15th through 30th day
$5,000	31st day and beyond

75. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 89 of Section XXI (Covenants Not to Sue by Plaintiff), Performing Settling Defendants shall be liable for a stipulated penalty in the amount of $1,000,000.

76. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Performing Settling Defendants of any deficiency; (2) with respect to a decision by the ERRD Director under Paragraph 70(b) or 71(a) of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Performing Settling Defendants' reply to EPA's Statement of Position is received until

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

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

78. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Performing Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Performing Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be remitted via EFT in accordance with the payment procedures set forth in Paragraph 56(a) above, and shall indicate that the payment is for stipulated penalties.

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

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

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

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

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

81. If Performing Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Performing Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 78.

82. 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(l) of CERCLA, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l)

of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

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

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

84. 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 85, 86, and 88 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. As to Performing Settling Defendants: (i) except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of their payment required by Paragraph 56(a) of Section XVI (Payments for Response Costs); (ii) 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 52.b of Section XIV (Certification of Completion); and (iii) these covenants not to sue are conditioned upon the satisfactory performance by Performing Settling Defendants of their obligations under this Consent Decree. As to Non-Performing Settling Defendants, except as specifically provided in Paragraphs 85, 86, and 88 of this Section, these covenants not to sue shall take effect upon the receipt by EPA of their payment required by Paragraph 56(a) of Section XVI (Payments for Response Costs). These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

85. 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

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action: (1) conditions at the Site, previously unknown to EPA, are discovered, or information, previously unknown to EPA, is received, in whole or in part; and (2) EPA determines that 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.

86. 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

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action: (1) conditions at the Site, previously unknown to EPA, are discovered, or information, previously unknown to EPA, is received, in whole or in part; and (2) EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

87. For purposes of Paragraph 85, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 86, the information and the

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

88. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

a. claims based on a failure by any Settling Defendant to meet a requirement applicable to it under this Consent Decree;

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

c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;

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

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans);

89. Work Takeover

(a) In the event EPA determines that Performing Settling Defendants have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Performing Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Performing Settling Defendants a period of 10 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

(b) If, after expiration of the 10-day notice period specified in Paragraph 89(a), Performing Settling Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Performing Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 89(b).

(c) Performing Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 70, to dispute EPA's implementation of a Work Takeover under Paragraph 89(b). However, notwithstanding Performing Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute,

EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 89(b) until the earlier of (i) the date that Performing Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (ii) the date that a final decision is rendered in accordance with Section XIX (Dispute Resolution), Paragraph 71, requiring EPA to terminate such Work Takeover.

(d) After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII of this Consent Decree, in accordance with the provisions of Paragraph 50 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Performing Settling Defendant(s) fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 50, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Performing Settling Defendants shall pay pursuant to Section XVI (Payment for Response Costs).

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

XXII. COVENANTS BY SETTLING DEFENDANTS

91. Covenant Not to Sue. Subject to the reservations in Paragraph 92, 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:

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

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

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 98 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 85, 86, 88(b) - (d) or 88 (g), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

92. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Performing Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

93. 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).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

94. 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.

95. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. For purposes of the preceding sentence, the "matters addressed in this Consent Decree" are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site.

96. 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.

97. 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 any order from a court setting a case seeking contribution for trial.

98. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

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

100. Business Confidential and Privileged Documents.

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 or 40 C.F.R. Part 2, Subpart B, 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.

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

XXV. RETENTION OF RECORDS

102. Until 10 years after the Performing Settling Defendants' receipt of EPA's notification pursuant to Paragraph 53(b) of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or

which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Performing Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Performing Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) 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, provided, however, that each Performing Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents or records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

103. 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 Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants.

However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

104. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

105. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA and the Settling Defendants, respectively.

As to the United States or EPA:

Seven copies of all work plans, design documents, and technical reports and one copy of all required written communications shall be sent to:

Chief, Western New York Remediation Section
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, NY 10007-1866
Attn: Sherrel Henry
Peter Cooper Landfill Superfund Site
Remedial Project Manager

One copy of all required 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
290 Broadway, 17th Floor
New York, NY 10007-1866
Attn: Peter Cooper Landfill 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 # 90-11-2-06887

As to the EPA Financial Management Officer:

United States Environmental Protection Agency
26 W. Martin Luther King Drive
Attention: FINANCE
MS: NWD
Cincinnati, Ohio 45268
Attn: Richard Rice
E-mail: Rice.Richard@epa.gov and AcctsReceivable.CINWD@epa.gov

As to New York State:

Martin Doster
Hazardous Waste Remediation
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203-2999

As to Settling Defendants:

Lipman & Biltekoff, LLP
333 International Drive, Suite B-4
Williamsville, New York 14221-5726
Attn: Michael P. Joy, Esq.

Kelley Drye Collier Shannon
Washington Harbour, Suite 400
3050 K Street, NW
Washington, DC 20007-5108
Attn: John Wittenborn, Esq.

Seth Davis, Esq.
Elias Group LLP
411 Theodore Fremd Avenue
Rye, New York 10580

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

108. 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 map of the Site;

"Appendix D" is the complete list of the Settling Defendants;

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

"Appendix F" is the complete list of the Non-Performing Settling Defendants

"Appendix G" is the complete list of Performing Settling Defendants;

"Appendix H" is the form of easement; and

"Appendix I" is the form of Trust Fund Agreement.

XXX. COMMUNITY RELATIONS

109. Performing 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 Performing Settling Defendants under the Plan. Performing Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Performing Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

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

111. Except as provided in Paragraph 14 (Modification of the SOW or Related Work Plans), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Performing Settling Defendants, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). 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, or material modifications to the SOW that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), 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 Performing Settling Defendants.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XXXIII. SIGNATORIES/SERVICE

115. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of DOJ 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.

116. 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.

117. 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.

XXXIV. FINAL JUDGMENT

118. This Consent Decree, including its appendices, constitutes the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

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

SO ORDERED THIS __ DAY OF _____, 20__.

_____
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

11/4/08
Date

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

11/4/08
Date

David L. Weigert
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

11/4/08
Date

Mary Pat Fleming
Chief, Civil Division
Assistant United States Attorney
Western District of New York
U.S. Department of Justice
Federal Centre
138 Delaware Avenue
Buffalo, New York 14202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

9/11/08
Date

George Pavlou, Acting Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

WILHELM ENTERPRISES CORP.
FOR _____ **COMPANY, INC.**

8/14/08
Date

Signature: _____
Name (print): ROBERT WILHELM
Title: PRESIDENT
Address: 194 SAN JUAN DR.
PONTE VEDRA BCH., FL.
32082

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

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

FOR NEW YORK STATE ELECTRIC & GAS CORPORATION

August 15, 2008
Date

Signature:
Name (print): Seth A. Davis
Title: attorney
Address: Elias Group LLP
Suite 102
411 Theodore Fremd Avenue
Rye, New York 10580

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

Name (print): Seth A. Davis
Title: attorney
Address: Elias Group LLP
Suite 102
411 Theodore Fremd Avenue
Rye, New York 10580
Ph. Number: 914-925-0000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

9-20-07
Date

FOR JIMCAR DEVELOPMENT, INC. AND JAMES A.DILL
Signature: _____
Name (print): James A. Dill
Title: Pres
Address: 8228 Reed Hill Road
Cattaraugus, New York 14719

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR Brown Shoe COMPANY, INC.

August 1, 2008
Date

Signature: /
Name (print): Michael I. Oberlander
Title: Senior Vice President, General Counsel + Corp. Secy
Address:
8300 Maryland Ave
St. Louis MO 63105

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

Name (print):
Title: SAME AS ABOVE
Address:

Ph. Number: (314) 854-4119

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.,* relating to the Peter Cooper Landfill Superfund Site.

FOR Sotw COMPANY, INC.

8/15/08
Date

Signature: [illegible]
Name (print): David S. Alcorn
Title: GC & Sec.
Address:
1000 Madison Ave
Norristown, PA 19403

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

Name (print):
Title:
Address:

Ph. Number:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR GST AUTOLEATHER ~~COMPANY~~, INC.

8/12/08
Date

Signature: _____
Name (print):
Title: SVP/CFO
Address: 20 OAK HOLLOW, SUITE 300
SOUTHFIELD, MI 48033

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

Name (print):
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR Prime Tanning **COMPANY, INC.**

Date

Signature:
Name (print):
Title: Counsel to Prime Tanning Co., Inc.
Address: Burns + Levinson
125 Summer St
Boston, Ma.
02110

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

Name (print): DAVID P. ROSENBLATT
Title: Counsel to Prime Tanning Co., Inc
Address: Burns + Levinson
125 Summer St
Boston Ma 02110

Ph. Number: 617-345-3000

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.,* relating to the Peter Cooper Landfill Superfund Site.

FOR Viad Corp, ~~COMPANY, INC.~~

9/8/08
Date

Signature: _____
OKR Name (print): Scott E. Sayre
Title: VP-General Counsel & Secretary
Address: 1850 N. Central Ave, Ste 800
Phoenix AZ 85004-4545

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

Name (print):
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR ConAgra Grocery Products COMPANY, LLC.

7/16/08
Date

Signature: ____
Name (print): Leo K. Knowles
Title: President
Address: One ConAgra Drive
Omaha, NE 68102

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

Name (print): John A. Andreasen
Title: Attorney at Law
Address:
McGrath North Mullin & Kratz, PC LLO
First National Tower
1601 Dodge Street, Suite 3700
Omaha, NE 68102
Ph. Number: (402) 341-3070

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR LEUCADIA NATIONAL CORPORATION

_____
Date

Signature: _____
Name (print): Thomas E. Mara
Title: Executive Vice President
Address: 315 Park Avenue South
New York, NY 10010

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

Name (print):
Title: _____
Address: _____
_____
_____
_____
Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR BEGGS & COBB CORPORATION

July 16, 2008
Date

Signature: _
Name (print): Robert E. Remis
Title: President
Address: 2 Commonwealth Avenue
Boston, MA 02117

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

Name (print): Paul J. Lambert
Title: Attorney
Address: Bingham McCutchen LLP
2020 K Street, N.W.
Washington, DC 20006

Ph. Number: (202) 373-6099

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR WOLVERINE WORLD WIDE, INC.

8-22-2008
Date

Signature:
Name (print): Kenneth A. Grady
Title: General Counsel
Address: 9341 Courtland Drive
Rockford, Michigan 49351

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

Name (print): Kenneth A. Grady
Title: General Counsel
Address: 9341 Courtland Drive
Rockford, Michigan 49351
Ph. Number: (616) 866-7315

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR GENESCO ~~COMPANY~~, INC.

8/6/08
Date

Signature: _____
Name (print): Roger G. Sisson
Title: Sr VP, General Counsel
Address: 1415 Murfreesboro Road, Suite 490
Nashville TN 37217

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

Name (print): _____
Title: _____
Address: _____

Ph. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR ALBERT TROSTEL & SONS CO.

[redacted]

8/20/08
Date

Signature:
Name (print): Steven J. Hartung
Title: Vice President
Address: 330 E. Kilbourn Ave
Suite 750
Milwaukee, WI 53202

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

Name (print): Steven J. Hartung
Title: Vice President
Address: 330 E. Kilbourn Avenue
Suite 750
Milwaukee, WI 53202

Ph. Number: (414) 223-1560

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR BLACKHAWK LEATHER LTD.*

[redacted]

8/20/08
Date

Signature: _____
Name (print): Steven J. Hartung
Title: Vice President
Address: 330 E. Kilbourn Avenue
Suite 750
Milwaukee, WI 53202

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

Name (print): Steven J. Hartung
Title: Vice President
Address: 330 E. Kilbourn Avenue
Suite 750
Milwaukee, WI 53202

Ph. Number: (414) 223-1560

*Dissolved entity.

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR EAGLE OTTAWA LLC

[redacted]

8/20/08
Date

Signature:
Name (print): Steven J. Hartung
Title: Vice President
Address: 330 E. Kilbourn Avenue
Suite 750
Milwaukee, WI 53202

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

Name (print): Steven J. Hartung
Title: Vice President
Address: 330 E. Kilbourn Avenue
Suite 750
Milwaukee, WI 53211

Ph. Number: (414) 223-1560

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR S.B. Foot Tanning COMPANY, INC.

7/17/08
Date

Signature:
Name (print): David Baker
Title: Executive Vice President
Address: Bench Street
Red Wing, MN 55066

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

Name (print):
Title:
Address:

Ph. Number:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wilhelm Enterprises Corporation *et al.*, relating to the Peter Cooper Landfill Superfund Site.

FOR Horween Leather COMPANY, INC.

July 16, 2005
Date

Signature: _____
Name (print): Arnold Horween II
Title: President
Address: 2015 N. Elston Ave
Chicago, IL
60614

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

Name (print): Lawrence W. Falbe, Esq
Title: Attorney for Horween Leather
Address:
Drinker Biddle & Reath LLP
191 N Wacker Dr.
Chicago, IL 60606-1698
Ph. Number: 312-569-1451