IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND

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CLERK'S OFFICE
AT BALTIMORE
BY _____ DEPUTY

UNITED STATES OF AMERICA	:	
Plaintiff,	:	
v.	:	Civil Action No. _____
AGERE SYSTEMS, INC., et al.,	:	
Defendants.	:	

AMD 07 CV 0155

CONSENT DECREE

SPECTRON, INC. SUPERFUND SITE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	
Plaintiffs,	:	**Civil Action No. _____**
v.	:	
AGERE SYSTEMS, INC., et al.,	:	
Defendants.	:	

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), the Under Secretary for Oceans and Atmosphere of the United States National Oceanic and Atmospheric Administration ("NOAA") acting on behalf of the United States Secretary of Commerce, the Secretary of the United States Department of the Interior ("DOI") acting through the Fish and Wildlife Service ("FWS"), the Maryland Department of the Environment ("MDE") and the Maryland Department of Natural Resources ("MDNR"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Spectron, Inc. Superfund Site in Elkton, Maryland, together with accrued interest; (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"); and (3) payment of Natural Resource Damages, including reimbursement of past costs.

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 Maryland (the "State"), on August 15, 2003, of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site and 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 Department of Interior and the National Oceanic and Atmospheric Administration on August 14, 2003, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

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

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on May 31, 1994, 59 Fed. Reg. 27989.

G. In response to a release or a substantial threat of a release of a hazardous substances at or from the Site, some of the Settling Performing Defendants commenced, in May 1997, a Remedial

Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430 and an Administrative Order on Consent for Remedial Investigation/Feasibility Study, Docket No. III-96-15-DC, which is an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

H. The Remedial Investigation ("RI") Report and a Feasibility Study ("FS") Report were completed for Operable Unit 1 ("OU-1") on or about March 2003.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action for Operable Unit 1 on June 20, 2003, 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 Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action for Operable Unit 1 to be implemented at the Site is embodied in a final Record of Decision ("OU-1 ROD"), executed on September 16, 2004, on which the State has given its concurrence. The September 2004 OU-1 ROD includes EPA's explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. An RI/FS for Operable Unit 2 ("OU-2"), which relates to the bedrock ground water at the Site, currently is being performed by some of the Settling Performing Defendants. EPA intends to issue a ROD for OU-2 ("OU-2 ROD") following completion of the RI/FS. The Parties recognize that if an OU-2 remedy is selected, the OU-2 ROD will include an estimate of the

present worth cost of such OU-2 remedy, and that the actual cost of such remedy may be higher or lower than the OU-2 ROD estimate.

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

M. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action selected by the OU-1 ROD and which may be selected by the OU-2 ROD, and the Work to be performed by the Settling Performing Defendants shall constitute a response action taken or ordered by the President.

N. Liability for damages to Natural Resources, pursuant to Sections 107(a) and (f) of CERCLA, 42 U.S.C. §9607(a) and (f), shall be to the United States and the State for Natural Resources belonging to, managed by, controlled by, or appertaining to them. The United States and the State are authorized to assess injuries to federal and state Natural Resources caused by releases of hazardous substances and to recover damages to: (1) restore, rehabilitate, replace or acquire the equivalent of the injured Natural Resources, and (2) reimburse the Trustees for the reasonable costs of the Damage Assessment and Restoration planning. 42 U.S.C. § 9607(a), (f).

O. Pursuant to Executive Order 12580 and the National Contingency Plan, 40 C.F.R. § 300.600(1) and (2), the United States Department of Commerce, acting through NOAA, and the United States Department of the Interior, acting through the FWS, have been delegated authority to act as the federal trustees for Natural Resources impacted by the releases of hazardous substances at or from the Site.

P. The United States and the State share trusteeship of the injured Natural Resources at the

Site. NOAA and DOI, on behalf of the Natural Resource Trustees, have assessed Natural Resources, including ecological services, injured, lost or destroyed as a result of the releases of hazardous substances in areas at or adjacent to the Site. NOAA and DOI have determined that releases of hazardous substances to the wetlands, surface water, groundwater, sediments, and terrestrial habitats within or adjacent to the Site have resulted in injury to these Natural Resources.

Q. 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, that implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, 9613(b), and 9622(d). 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, the State, solely in its capacity as Trustee for Natural Resources, and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

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

IV. DEFINITIONS

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

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

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

"Damage Assessment Costs" means the costs incurred by the Trustees in assessing any Natural Resources actually or potentially injured, destroyed, or lost as a result of releases of hazardous substances from the Site, and in identifying and planning for Restoration actions to compensate for such injuries, destruction and losses. Such costs include administrative costs and other costs or expenses, direct and indirect, including but not limited to, the Trustee attorneys' costs incurred to support the assessment and Restoration planning process.

"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.

"Duly Authorized Representative" shall mean a person set forth or designated in accordance

with the procedures set forth in 40 C.F.R. § 270.11(b).

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

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

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Performing Defendants' performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports, and other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to Sections VII (Remedy Review), X (Access and Institutional Controls), XVI (Emergency Response), and Paragraph 97 of Section XXII (Work Takeover), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XX (Dispute Resolution) and all litigation costs.

"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, X (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), XVI, and Paragraph 97 of Section XXII. Future Response Costs shall also include all Interim Response Costs. Future Response Costs under this Consent Decree shall not include costs incurred by EPA to finance or perform any remedy pursuant to the OU-2 ROD in the event Settling Performing Defendants decline performance of the OU-2 remedy pursuant to Paragraph 6.b.ii.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between November 25, 2003 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 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.

"Interest Earned" shall mean interest earned on amounts in the Spectron Site Disbursement Special Account, which shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

"Matters Addressed" shall mean 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 OU-1 and, in the event that Settling Performing Defendants perform OU-2 under Paragraph 6.b., with respect to the Site.

"MDNR" shall mean the Maryland Department of Natural Resources.

"MDE" shall mean the Maryland Department of the Environment.

"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.

"Natural Resource" or "Natural Resources" means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources, belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States or the State, and the services provided by such resources.

"Natural Resource Damages" means any damages recoverable by the United States or the State on behalf of the public for injury to, destruction of, loss of, loss of use of, or impairment of Natural Resources in areas at or adjacent to the Site as a result of a release of hazardous substances including, but not limited to: (1) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such release; (2) the costs of Restoration of injured, destroyed or lost Natural Resources; (3) the costs of planning such Restoration activities; (4) compensation for injury, destruction, loss, loss of use, or impairment of Natural Resources; and (5) each of the categories of recoverable damages described in 43 C.F.R. § 11.15. "Natural Resource Trustees" or "Trustees" means NOAA, DOI/FWS , MDE and MDNR.

"Operable Unit" or "OU" shall mean any discrete geographical area, medium or type of contamination, as designated by EPA, that lends itself to efficient study or cleanup separate from other geographical areas, media or types of contamination.

"Operable Unit 1" or "OU-1" shall mean the portion of Work for remedial actions for the

overburden soils and ground water of a portion of the Site described as the Plant Area in the OU-1 ROD.

"OU-1 ROD" shall mean the EPA Record of Decision relating to the first Operable Unit at the Site, signed on September 16, 2004 by the Regional Administrator, EPA Region III, and all attachments and any changes, in accordance with the NCP, thereto. The September 16, 2004 OU-1 ROD is attached as Appendix A.

"Operable Unit 2" or "OU-2" shall mean the portion of the Work for remedial actions, which may be selected for the bedrock ground water and Office Area (described in the OU-1 ROD) portion of the Site.

"OU-2 ROD" shall mean a future EPA ROD, which may select a remedial action to be implemented as OU-2, to be signed by the Regional Administrator, EPA Region III, or his/her delegate, and all attachments and any changes, in accordance with the NCP, thereto.

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

"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, the State, through MDE and MDNR, solely in its capacity as Trustee for Natural Resources, the Settling Performing Defendants and the Settling Non-Performing Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has paid at or in connection with the Site through November 25,

2003, and which are identified in the summary of costs attached hereto as Appendix E, 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, as set forth on pages 30 through 37 of the September 2004 OU-1 ROD attached hereto as Appendix A and to be set forth in an OU-2 ROD, and those that are developed by the Settling Performing Defendants and approved , modified or selected by EPA during implementation of this Consent Decree.

"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 an EPA Record of Decision relating to the Operable Unit specified by that ROD for the Site, signed by the Regional Administrator, EPA Region III, or his delegate, and all attachments and any changes, in accordance with the NCP, thereto.

"Remedial Action" shall mean those activities, except for Remedial Design and Operation and Maintenance, to be undertaken by the Settling Performing Defendants to implement the OU-1 ROD and/or OU-2 ROD, in accordance with the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA for that specific ROD.

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

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

Remedial Design Work Plan for each specific ROD.

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

"Restore" or "Restoration" means any action or combination of actions to restore, rehabilitate, replace, or acquire the equivalent of any Natural Resource or its services injured, lost, or destroyed as a result of a release of hazardous substances from the Site.

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

"Settling Defendants" shall mean the Parties identified in Appendix B (Settling Non-Performing Defendants) and Parties identified in Appendix C (Settling Performing Defendants), including their successors-in-interest, but only to the extent that such successor entities' liability is alleged to derive from the respective Settling Defendant's CERCLA liability for the Site.

"Settling Non-Performing Defendants" shall mean the Settling Defendants identified and so designated in Appendix B.

"Settling Performing Defendants" shall mean the Settling Defendants identified and so designated in Appendix C.

"Site" shall mean the Spectron, Inc. Superfund Site (also known as the Galaxy/Spectron, Inc. Superfund Site), located at 109-111 Providence Road in Elkton, Cecil County, Maryland and depicted in the OU-1 and OU-2 RODs.

"Spectron, Inc. Superfund Site Special Account" or "Spectron Site Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and pursuant to a Global Consent Decree for De Minimis Parties, Civ. No. AMD 02-3858, entered by this Court on March 31, 2003.

"Spectron Site Disbursement Special Account" shall mean the special account established for the Site pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and this Consent Decree.

"State" shall mean the State of Maryland.

"Supervising Contractor" shall mean a principal contractor retained by the Settling Performing 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 Settling Performing Defendants are required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

a. 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 and on behalf of the Settling Performing Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

b. This Consent Decree is intended to provide funding for Restoration of the Natural Resources alleged to have been injured, destroyed or lost by the release of hazardous substances from the Site; to resolve the Settling Defendants' liability for Natural Resource Damages and Damage Assessment Costs caused by the alleged release; and to avoid further transaction costs and protracted litigation. Through this Consent Decree, the Settling Defendants and the Trustees intend to settle and resolve all claims for Natural Resource Damages and Damage Assessment Costs under applicable federal, state and common law, except as specifically reserved in Paragraph 139 (Special Reservations Regarding Natural Resource Damages) of this Consent Decree.

6. Commitments by Settling Performing Defendants and Settling Non-Performing Defendants.

a. Settling Performing Defendants shall finance and perform the Work in accordance with this Consent Decree, the OU-1 ROD, the OU-2 ROD (except as specifically provided in Paragraph 6.b., below), and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Performing Defendants and approved by EPA pursuant to this Consent Decree. Settling Performing Defendants shall also reimburse the United States for Future Response Costs as provided in this Consent Decree.

b. Pursuant to the terms of this Consent Decree, the Settling Performing Defendants shall finance, perform and implement an OU-2 remedy, if one is selected in the OU-2 ROD, unless the estimated present worth cost of such remedy specified in the OU-2 ROD is greater than $10 million. If the estimated present worth cost of any remedy selected in the OU-2 ROD is greater than $10 million, Settling Performing Defendants shall provide EPA with a written

statement, within thirty (30) days of the date of issuance of the OU-2 ROD, electing either:

i. to perform the OU-2 remedy under the terms of this Consent Decree which are otherwise applicable to the performance of the OU-2 remedy; or

ii. to decline performance of the OU-2 remedy, in which case the United States reserves whatever legal and equitable response, cost recovery and other authorities it may have against the Settling Performing Defendants, and the Settling Performing Defendants reserve their rights and defenses with respect to the selected OU-2 remedy.

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

d. In the event that any of the Settling Performing Defendants files for bankruptcy or is placed involuntarily in bankruptcy proceedings, such Settling Performing Defendant shall notify the United States within three (3) days of such filing.

e. As negotiated between Settling Non-Performing Defendants and Settling Performing Defendants, the Settling Non-Performing Defendants individually have agreed to pay the Settling Performing Defendants, within thirty (30) days after this Consent Decree is lodged with the Court, all monies necessary to satisfy the Settling Performing Defendants' claims for contribution against the Settling Non-Performing Defendants arising pursuant to this Consent Decree with respect to OU-1 and OU-2. Accordingly, subject to the United States' reservations of rights set forth in Paragraph 96 of Section XXII (Covenants Not to Sue by Plaintiff), the Settling Non-Performing

Defendants shall have no further obligations under this Consent Decree except as otherwise specifically set forth in this Consent Decree or in one or more or separate settlement agreements between the Settling Performing Defendants and Settling Non-Performing Defendants.

7. Compliance With Applicable Law

All activities undertaken by Settling Performing Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Performing Defendants must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the OU-1 ROD and OU-2 ROD. 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, Settling Performing Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

9. [RESERVED].

VI. PERFORMANCE OF THE WORK BY SETTLING PERFORMING DEFENDANTS

10. Selection of Contractors.

a. Supervising Contractor.

i. All aspects of the Work to be performed by Settling Performing Defendants pursuant to Sections VI (Performance of the Work by Settling Performing Defendants), VII (Remedy Review), VIII (Implementation of In Situ Reductive Dechlorination), IX (Quality Assurance, Sampling, and Data Analysis), and XVI (Emergency Response) of this Consent Decree shall be under the direction and supervision of the EPA-accepted Supervising Contractor, Earth Data Northeast, Inc. If Settling Performing Defendants propose to change the Supervising Contractor at any time, Settling Performing Defendants shall notify EPA of such contractor's name, title, and qualifications and must obtain a notice of acceptance of such change from EPA, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree. With respect to any contractor proposed to be the new Supervising Contractor, Settling Performing 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 "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of

disapproval or acceptance of the selection of such new Supervising Contractor.

ii. If EPA disapproves the selection of a proposed Supervising Contractor, EPA will notify Settling Performing Defendants in writing. Settling Performing Defendants shall submit to EPA a list of at least three contractors, including the qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's notice. EPA will provide written notice of the names of any contractor(s) whose selection it would accept. Settling Performing Defendants may select any contractor from that list and shall notify EPA of the name of the contractor selected within thirty (30) days of EPA's written notice.

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

b. Other Contractors and Subcontractors.

The Settling Performing Defendants shall submit to EPA for acceptance the names and qualifications of any additional contractors and subcontractors they propose to use to satisfy any requirement of this Consent Decree before such contractor or subcontractor performs any Work. If EPA does not respond with a notice accepting or disapproving the proposal for additional contractors and subcontractors within fourteen (14) days of receipt by EPA of Settling Performing Defendants' selections, the proposal for additional contractors and subcontractors shall be deemed accepted. In the event EPA disapproves any proposed contractor or subcontractor, Settling Performing Defendants shall submit to EPA a list of at least three

contractors or subcontractors, including the qualifications of each, that would be acceptable to them within thirty (30) days of receipt of EPA's notice. EPA will provide written notice of the names of any contractor(s) or subcontractor(s) whose selection it would accept. Settling Performing Defendants may select any contractor or subcontractor from that list and shall notify EPA of the name of the contractor or subcontractor selected within ten (10) days of EPA's written notice.

11. Remedial Design/Remedial Action.

a. Within sixty (60) days after the lodging of this Consent Decree, Settling Performing Defendants shall submit to EPA a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan") for OU-1. In addition, unless Settling Performing Defendants decline performance of an EPA selected OU-2 remedy pursuant to Paragraph 6.b.ii., Settling Performing Defendants shall, within sixty (60) days after EPA issues the OU-2 ROD, submit to EPA an RD Work Plan for OU-2. The RD Work Plans for OU-1 and OU-2 shall be prepared by the individual(s) and/or entity(ies) responsible for completion of the respective Remedial Designs, except to the extent such persons have been disapproved by EPA. The Remedial Design Work Plan for OU-1 shall provide for design of the remedy set forth in the OU-1 ROD and for achievement of the Performance Standards and other requirements set forth in the OU-1 ROD and this Consent Decree. Subject to Paragraph 6.b., if EPA selects a Remedial Action in the OU-2 ROD, the Remedial Design Work Plan for OU-2 shall provide for design of the remedy to be set forth in the OU-2 ROD and for achievement of the Performance Standards and other requirements set forth in the OU-2 ROD and this Consent Decree. Upon its approval by EPA, each RD Work Plan shall be incorporated into and become enforceable under this

Consent Decree. The Settling Performing Defendants shall also submit to EPA and the State, at the time each RD Work plan is submitted, a Health and Safety Plan for field design activities specific to that OU, 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 Plans for OU-1 and OU-2 each shall include, unless otherwise specified herein, the following plans, schedules, and methodologies for implementation of all remedial design and pre-design tasks, at a minimum:

1. a Site Management Plan;
2. a Sampling and Analysis Plan, containing:
    a. a Field Sampling Plan; and
    b. a Quality Assurance Project Plan ("QAPP");
3. a Remedial Design Contingency Plan;
4. Treatability Study Work Plan(s):
    a. for OU-1, which include(s), at a minimum:
        i. plans and schedules for the preparation and submission of Treatability Study Evaluation Report for the baseline in-situ reductive dechlorination remedy component ("IRD") of OU-1, and
        ii. if required by EPA, a schedule for preparation of an IRD Field Pilot Study Work Plan based on the results of the bench scale Treatability Study, implementation of the Field Pilot Study and submission of a Field Pilot

Study Report; and

b. for OU-2, if a Remedial Action is selected in the OU-2 ROD, which includes, at a minimum, plans and schedules for the preparation and submission of a Treatability Study Evaluation Report, to the extent required by the future OU-2 ROD.

5. plans and schedules for the preparation and submission of a Preliminary Design Submittal (the preliminary design begins with the initial design and ends with the completion of approximately 30% of the design effort) containing, at a minimum:

a. a Design Criteria Report, including:

1. project description;
2. design requirements and provisions;
3. preliminary process flow diagrams;
4. operation & maintenance requirements;

b. a Basis of Design Report, including:

1. justification of design assumptions;
2. a project delivery strategy;
3. remedial action permits plan for off-site permits;
4. preliminary easement/access requirements;

c. Preliminary Drawings and Specifications, including:

1. outline of general specifications;
2. preliminary schematics and drawings;

3. chemical and geotechnical data (including data from pre-design activities);

d. a value engineering screen; and

e. preliminary Remedial Action schedule.

6. plans and schedules for the preparation and submission of an intermediate design submittal which shall be submitted at approximately 60% percent of the design effort and shall address all of EPA's comments to the preliminary design and, at a minimum, additionally include:

a. a revised Design Criteria Report, if necessary;

b. a revised Basis of Design Report, if necessary;

c. any value engineering study results;

d. a revised Remedial Action schedule;

e. a preliminary Remedial Action contingency plan;

f. a preliminary Remedial Action Health and Safety Plan ("HASP") for EPA acceptance;

g. a preliminary Remedial Action waste management plan; and

h. a preliminary Remedial Action Sampling and Analysis Plan.

7. plans and schedules for the preparation and submission of a pre-final design submittal which shall be submitted at approximately 90% of the design effort and shall address all of EPA's comments to the intermediate design, and, at a minimum, additionally include:

a. a preliminary Operation & Maintenance Plan;

b. a preliminary Construction Quality Assurance Plan ("CQAP") (the CQAP, 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);

c. a preliminary Remedial Action decontamination plan;

d. a draft final Remedial Action schedule;

e. a draft final Remedial Action contingency plan; and

f. a draft final Remedial Action HASP for EPA acceptance.

8. plans and schedules for the preparation and submission of a final design submittal which shall be submitted at 100% of the design effort and shall address all of EPA's comments to the pre-final design, and, at a minimum, additionally include:

a. a final Remedial Action schedule;

b. a final Remedial Action contingency plan;

c. a final Remedial Action HASP for EPA acceptance;

d. a final Remedial Action waste management plan;

e. a preliminary Remedial Action decontamination plan and a schedule for the submission of the final Remedial Action

decontamination plan;

f. a final Design Criteria Report;

g. a final Remedial Action Sampling and Analysis Plan (directed at measuring progress towards meeting the Performance Standards);

h. a final Basis of Design Report;

i. final Drawings and Specifications;

j. a revised Operation & Maintenance Plan and a schedule for submission of the final Operation & Maintenance Plan;

k. a final Construction Quality Assurance Plan;

l. a final Remedial Action decontamination plan; and

m. a final project delivery strategy.

9. a Remedial Design schedule.

c. Upon approval of the Remedial Design Work Plan for OU-1 and, if a Remedial Action is selected in the OU-2 ROD, the Remedial Design Work Plan for OU-2 by EPA, after a reasonable opportunity for review and comment by the State and submittal of the respective Health and Safety Plans for all field activities specific to each OU to EPA and the State, Settling Performing Defendants shall implement each RD Work Plan in accordance with the schedules and methodologies contained therein. The Settling Performing Defendants shall submit to EPA all plans, submittals, and other deliverables required under each approved RD Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Unless otherwise directed or approved by

EPA, Settling Performing Defendants shall not commence further Remedial Design field activities for OU-1 or OU-2 at the Site prior to approval of the relevant OU-1 or OU-2 RD Work Plan.

d. Upon approval, approval with conditions, or modification by EPA, as provided in Section XII (EPA Approval of Plans and Other Submissions), of all components of the final design submittals for OU-1, and for OU-2 if a Remedial Action is selected in the OU-2 ROD, the final design submittal for each specific OU shall serve as the Remedial Action Work Plan for that OU, and shall be enforceable under this Consent Decree. The Settling Performing Defendants shall implement the activities required under each Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

e. The Settling Performing Defendants shall submit all plans, submittals, or other deliverables required under each OU-1 and OU-2 Remedial Action Work Plan in accordance with the approved schedules for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA or required under the Remedial Design Work Plan for OU-1 or OU-2, the Settling Performing Defendants shall not commence physical activities at the Site prior to the date for commencement set forth in the approved schedule in that specific Remedial Action Work Plan.

12. Resident Engineer. Following EPA approval, approval with conditions, or modification by EPA, as provided in Section XII (EPA Approval of Plans and Other Submissions), of all components of each final design submittal for OU-1 and, if a Remedial Action is selected in the OU-2 ROD, for OU-2, and prior to commencement of any on-Site Work under each respective Remedial Action Work Plan, the Settling Performing Defendants shall submit to EPA the name

and qualifications of a Resident Engineer to be present at the Site during construction to ensure that the Work for that OU is performed in accordance with the approved Remedial Action Work Plan for that OU. The Resident Engineer(s) shall be familiar with all aspects of the Remedial Design approved by EPA for that OU. EPA retains the right to disapprove the use of any Resident Engineer proposed by Settling Performing Defendants. In the event EPA disapproves the use of any proposed Resident Engineer, Settling Performing Defendants shall submit to EPA a list of at least three replacements, including the qualifications of each, who would be acceptable to them within thirty (30) days of receipt of EPA's notice. EPA will provide written notice of the names of any replacements whose use it would accept. Settling Performing Defendants may select any replacement from the EPA notice and shall notify EPA of the name of the replacement selected within ten (10) days of EPA's written notice. Settling Performing Defendants shall ensure that the Resident Engineer(s) performs on-Site inspections as necessary to ensure compliance with the approved OU-1 and OU-2 Remedial Action Work Plans and that the results of such inspections are promptly provided to Settling Performing Defendants, EPA, and the State. The Resident Engineer(s) may act as the QA Official(s). The Settling Performing Defendants may request EPA to allow Supervising Contractor personnel to assume the role of Resident Engineer.

13. The Settling Performing Defendants shall, subject to the provisions of this Consent Decree, 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 Work.

a. If EPA determines that modification of the Work is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in either the OU-1 ROD or OU-2 ROD, EPA may (1) require that such modification be incorporated into the Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and/or any other plan relating to such Work for that OU, and/or (2) require that Settling Performing Defendants submit a plan for EPA approval which incorporates such modification to the Work and implement such approved plan for that OU. Provided, however, that a modification may be required pursuant to this Paragraph only to the extent that it is consistent with the scope of the remedy selected in the OU-1 ROD or OU-2 ROD as set forth in a written determination by EPA.

b. For the purposes of this Paragraph 14 and Paragraphs 58 and 59 only, the "scope of the remedy selected in the OU-1 ROD" means:

(1) tasks employing a technology or combination of technologies discussed in the OU-1 ROD to achieve and maintain the objectives described in the OU-1 ROD. The technologies discussed in the September 2004 OU-1 ROD include: (1) containment, collection and treatment of contaminated ground water; (2) demolition and site grading; (3) installation and maintenance of a modified RCRA cap; and (4) *in-situ* reductive dechlorination of contaminants;

(2) tasks associated with monitoring the areas of the Site addressed in the OU-1 ROD and the effectiveness of the OU-1 Remedial Action; and

(3) implementation of institutional controls, as defined herein.

The "scope of the remedy selected in the OU-1 ROD" may be modified by any subsequent

amendments to the OU-1 ROD, changes reflected or to be reflected in any Explanation of Significant Difference ("ESD") to the OU-1 ROD, or other modifications approved by EPA in consultation with the State and not requiring a ROD amendment or ESD.

c. For the purposes of this Paragraph 14 and Paragraphs 58 and 59 only, the "scope of the remedy selected in the OU-2 ROD" means: tasks employing a technology or combination of technologies that may be set forth in the OU-2 ROD to achieve and maintain the objectives to be described in the OU-2 ROD. The "scope of the remedy selected in the OU-2 ROD" may be modified by any subsequent amendments to the OU-2 ROD, changes reflected or to be reflected in any ESD to the OU-2 ROD, or other modifications approved by EPA in consultation with the State and not requiring a ROD amendment or ESD.

d. If Settling Performing Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XX (Dispute Resolution), Paragraph 77 (record review). The Remedial Design Work Plans, Remedial Action Work Plans, Operation and Maintenance Plans, and/or related work plans shall be modified in accordance with final resolution of the dispute.

e. Settling Performing Defendants shall implement any work required by any modifications incorporated in the Remedial Design Work Plans, Remedial Action Work Plans, Operation and Maintenance Plans, and/or in work plans developed in accordance with this Paragraph.

f. 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. Settling Performing Defendants acknowledge and agree that nothing in this Consent

Decree 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 Work Plans will achieve the Performance Standards.

16. Settling Performing Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

a. The Settling Performing Defendants shall include in the written notification the following information, where available:

1. the name and location of the facility to which the Waste Material is to be shipped;
2. the type and quantity of the Waste Material to be shipped;
3. the expected schedule for the shipment of the Waste Material; and
4. the method of transportation.

The Settling Performing Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Performing Defendants following the award of the contract for Remedial Action construction. The Settling Performing Defendants shall provide the information required by Paragraph 16.a as

soon as practicable after the award of the contract but in no case less than seven (7) days before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Performing Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Settling Performing 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. Settling Performing 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 (5) 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 for OU-1 and/or OU-2 is not protective of human health and the environment, EPA may select further response actions regarding the Site, in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Settling Performing 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. Settling Performing Defendants' Obligation To Perform Further Response Actions. Nothing in this or any other provision of this Decree shall be construed to limit or condition EPA's authority to select further response actions for additional operable units for the Site in accordance with the NCP and CERCLA.

a. If Settling Performing Defendants finance and perform the Work in accordance with the OU-2 ROD pursuant to Paragraph 6, then Settling Performing Defendants shall undertake such further response actions that EPA has selected for the Site, to the extent that the reopener conditions in Paragraph 93 and 94 (United States' reservations of liability based on unknown conditions or new information) are satisfied.

b. If EPA requires Settling Performing Defendants to undertake further actions pursuant to this Paragraph 20, Settling Performing Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 93 or Paragraph 94 of Section XXII (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 as arbitrary and capricious or otherwise not in accordance with the law. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 77 (record review).

21. Submissions of Plans. If Settling Performing 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 Settling Performing Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. IMPLEMENTATION OF IN SITU REDUCTIVE DECHLORINATION

This Section VIII applies solely to the OU-1 ROD remedy component concerning *in-situ* reductive dechlorination ("IRD") of contaminants, which, as described in Section 11 of the September 2004 OU-1 ROD, was selected by EPA to reduce, to the maximum extent practicable, the contaminant mass in the overburden. Nothing in this Consent Decree shall be deemed to prevent the Settling Performing Defendants from petitioning EPA to modify or waive compliance with any Performance Standard or provision of the OU-1 ROD pertaining to IRD, to the extent permitted by and in accordance with procedures under applicable law and/or EPA policy. EPA will consider any such petition during or after the bench-scale treatability study, provided such study is being or has been performed in accordance with an approved Treatability Study Work Plan for IRD, as required by the September 2004 OU-1 ROD and Paragraph 11.b.4.a. of this Consent Decree.

22. The Settling Performing Defendants may petition EPA to modify or waive compliance with one or more of the Performance Standards or provisions in the OU-1 ROD regarding IRD, based on a demonstration that it is technically impracticable, from an engineering or hydrogeological perspective, to attain such Performance Standard.

23. The determination of whether attainment of a particular Performance Standard is technically impracticable will be made by EPA in consultation with MDE and will be based on the results of the Treatability Study and in accordance with applicable EPA guidance, accepted

scientific literature, and/or other relevant information.

24. Such a petition shall demonstrate that the Treatability Study was conducted in accordance with the Treatability Study Work Plan to permit a reliable analysis of its performance and its ability to achieve Performance Standards, that the Treatability Study was designed, constructed and performed in a manner which is consistent with EPA and other relevant guidance, and that the Treatability Study parameters have been modified or enhanced to the extent practicable to optimize performance. At a minimum, such petition shall include:

a. a list or description of the Performance Standard(s) and/or the OU-1 ROD provision(s) for which a modification and/or waiver is sought;

b. a demonstration, including appropriate engineering analysis, that attainment of such Performance Standard(s) is technically impracticable from an engineering or hydrogeologic perspective, in support of the proposed modification and/or waiver sought; and

c. a work plan, for EPA approval, setting forth the manner in which chemical oxidation shall be implemented, if such petition is granted by EPA, to reduce the principal threat waste to the maximum extent practicable, including: (1) appropriate bench scale and field scale treatability testing; and (2) the alternative Performance Standard(s) that chemical oxidation will be expected to attain.

25. Upon receipt of all information required by the previous Paragraph, EPA in consultation with MDE, will review and consider the information in the petition and any other relevant information. After opportunity for review and comment by MDE, EPA will determine:

a. whether compliance with any of the Performance Standards pertaining to

IRD shall be waived, or whether such Performance Standards shall be modified;

b. whether any OU-1 ROD provision pertaining to IRD shall be waived or modified;

c. what, if any, alternative remediation requirements, including alternative Performance Standards and other protective measures, will be established by EPA in consultation with MDE, to reduce the principal threat waste to the maximum extent practicable. EPA's determination on the petition to modify or waive compliance with any Performance Standard or provision of the OU-1 ROD pertaining to IRD will be consistent with the National Contingency Plan ("NCP"), Section 121 of CERCLA, and any other applicable laws, regulations and guidance in effect at the time.

26. If the first petition is rejected, a subsequent petition will be considered by EPA in consultation with MDE only if EPA determines that it is based on significant new Site-specific data developed from the field pilot study, required by the September 2004 OU-1 ROD and Paragraph 11.b.4.a., which could not have been developed at the time the previous petition was submitted. In the event EPA determines that the attainment of a particular Performance Standard is not technically impracticable and that no post-ROD decision document is necessary, such a determination shall not be subject to review under the provisions of Section XX (Dispute Resolution) of this Consent Decree and shall not otherwise be judicially reviewable.

27. If EPA, after a reasonable opportunity for review and comment by MDE, grants any petition or other relief pursuant to this Section, that decision will be reflected in a post-ROD decision document, as required by the NCP. If modification of this Consent Decree is required to implement EPA's decision, such modification will be filed and, if necessary, Court approval will

be sought in accordance with Section XXXII (Modification) of this Consent Decree.

28. Upon EPA's issuance of any post-ROD decision document, and, if necessary, the filing of a Consent Decree modification with the Court and issuance of a court order approving the modification, Settling Performing Defendants shall implement the modifications selected by EPA to achieve and maintain all Performance Standards, alternative Performance Standards and remediation requirements established pursuant to this Section. Settling Performing Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute that EPA's issuance of its post-ROD decision document is arbitrary and capricious or not otherwise in accordance with the law. Such a dispute shall be resolved pursuant to Paragraph 77 (record review) of Section XX (Dispute Resolution). Unless expressly modified by EPA's decision on the petition submitted hereunder, all requirements of this Consent Decree shall continue in full force and effect.

29. Neither the submission of a petition by Settling Performing Defendants nor the granting or rejection of such petition by EPA in consultation with MDE pursuant to this Section shall relieve Settling Performing Defendants of their obligation to:

a. continue to operate the groundwater treatment system; and

b. attain Performance Standards and perform any Work not specifically waived or modified pursuant to this Section; and

c. complete any other obligation under this Consent Decree.

IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

30. While conducting all sample collection and analysis activities required by this Consent

Decree, the Settling Performing Defendants shall implement quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5)"(EPA 240 B-01 003, March 2001); "EPA NEIC Policies and Procedures Manual," (May 1986) (EPA 330/978-001-R); National Functional Guidelines for Inorganic Data Review (EPA 540/R-94/013) and Modifications to the National Functional Guidelines for Inorganic Data Review (EPA Region III: April 1993); National Functional Guidelines for Organic Data Review (EPA 540/R-94/012) and Modifications to the National Functional Guidelines for Organic Data Review (EPA Region III: September 1994); "Region III Innovative Approaches to Data Validation," (EPA Region III: September 1994); "Data Quality Objectives Process for Superfund," (EPA 540/R-93/071: September 1994); and subsequent amendments to such guidelines upon notification by EPA to Settling Performing Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Performing Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") for the Work that is consistent with the NCP and the guidance documents cited above. 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. Settling Performing Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Performing Defendants in implementing this Consent Decree. In addition, Settling Performing Defendants shall ensure that such laboratories shall analyze all

samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Performing 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. Settling Performing Defendants shall submit to EPA the selected laboratory's(ies') Quality Assurance Program Plan and their qualifications, which shall include, at a minimum, previous certifications, Performance Evaluation ("PE") results, equipment lists and personnel resumes. Settling Performing 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. At the request of EPA, Settling Performing Defendants shall conduct one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the QAPP. If such audits are requested by EPA, auditors shall conduct lab audits during the time the laboratory(ies) is analyzing samples collected pursuant to this Consent Decree. The lab audit shall be conducted according to procedures available from the QA Branch. Audit reports shall be submitted to the EPA Project Coordinator within fifteen (15) days of completion of the audit. The Settling Performing Defendants shall report serious deficiencies, including all those which adversely impact data quality, reliability or accuracy, and take action to correct such deficiencies within twenty-four (24) hours of the time the Settling Performing Defendants knew or should have known of the deficiency.

31. Upon request, the Settling Performing Defendants shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Settling Performing 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 Settling Performing Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Performing Defendants' implementation of the Work.

32. Settling Performing Defendants shall submit to EPA three (3) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Performing Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

33. 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, and Settling Performing Defendants retain all of their rights and defenses concerning such information gathering, inspections, and enforcement actions.

X. ACCESS AND INSTITUTIONAL CONTROLS

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

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

i. Monitoring the Work;

ii. Verifying any data or information submitted to the United States;

iii. Conducting investigations relating to contamination at or near the Site;

iv. Obtaining samples;

v. Assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

vii. Implementing the Work pursuant to the conditions set forth in Paragraph 97 of this Consent Decree (Work Takeover);

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

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

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

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to prohibitions on: (1) any activity or property use within the Plant Area that could compromise the integrity of the

cap; (2) use or contact with overburden ground water within the OU-1 Area; (3) any activity that could interfere with the operation of the Ground Water Containment System; (4) any activity that could interfere with the *in situ* treatment component of the remedy, as further described in the OU-1 ROD; and (5) any activity that could interfere with the remedy selected in an OU-2 ROD; and

c. execute and record in the office of the clerk of the circuit court (or other appropriate official) of Cecil County, State of Maryland, 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 34.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 34.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 Defendant(s) shall grant the access rights and the rights to enforce the land/water use restrictions to the Settling Performing Defendants and their representatives. Such Settling Defendant(s) shall, within forty-five (45) days of the Effective Date, submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix D, that is enforceable under the laws of the State of Maryland; 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 Defendant(s) are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence,

such Settling Defendant(s) 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 office of the clerk of the circuit court (or other appropriate official) of Cecil County. Within thirty (30) days of recording the easement, such Settling Defendant(s) 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.

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

a. an agreement to provide access thereto for Settling Performing 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 34.a. of this Consent Decree;

b. an agreement, enforceable by the Settling Performing Defendants and the United States, to refrain from using the Site, or other property where land/water use restrictions are needed, 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 identified in Paragraph 34.b. of this Consent Decree; and

c. where land/water use restrictions are needed, execution and recordation in the office of the clerk of the circuit court (or other appropriate official) of Cecil County, State of

Maryland, 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 34.a. of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 34.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 the Settling Performing Defendants and their representatives. Within forty-five (45) days of the Effective Date, Settling Performing 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 D, that is enforceable under the laws of the State of Maryland; 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 Performing Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, such Settling Performing 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 office of the clerk of the circuit court (or other appropriate official) of Cecil County. Within thirty (30) days of recording the easement, such Settling Performing 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.

36. For purposes of Paragraph 35 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; provided, however, that EPA acknowledges that the payment of money by Settling Performing Defendants is not required to procure access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance from any party identified by EPA as a potentially responsible party ("PRP") for the Site or the successors or assigns of such a PRP. If (a) any access or land/water use restriction agreements required by Paragraphs 35.a. or 35.b. of this Consent Decree are not obtained within forty-five (45) days of the Effective Date, (b) any access easements or restrictive easements required by Paragraph 35.c. of this Consent Decree are not submitted to EPA in draft form within forty-five (45) days of the Effective Date, or (c) Settling Performing Defendants are unable to obtain an agreement pursuant to Paragraph 34.c(1) or Paragraph 35.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 forty-five (45) days of the date of the Effective Date, Settling Performing Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Performing Defendants have taken to attempt to comply with Paragraph 35 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Performing 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. Settling Performing Defendants shall reimburse the United States in accordance with the procedures in Section XVII (Payments for 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, unless the monetary consideration or just compensation is directed to a PRP or the successor or assign of such PRP.

37. 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 OU-1 ROD and/or the OU-2 ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Performing Defendants shall cooperate with EPA's efforts to secure such governmental controls.

38. 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.

XI. REPORTING REQUIREMENTS

39. In addition to any other requirement of this Consent Decree, Settling Performing Defendants shall submit to EPA and the State three (3) copies each of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling

and tests and all other data received or generated by Settling Performing Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts, and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Performing 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. Monthly progress reports may be submitted electronically in lieu of paper copies. Settling Performing Defendants shall submit the first progress report to EPA and the State no later than forty-five (45) days following the lodging of this Consent Decree, and subsequent progress reports by the twentieth day of every month thereafter, until EPA notifies the Settling Performing Defendants pursuant to Paragraph 59.b. of Section XV (Certification of Completion). If requested by EPA , Settling Performing Defendants shall also provide briefings for EPA to discuss the progress of the Work.

40. The Settling Performing 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, implementation of work plans, no later than seven (7) days prior to the performance of

the activity. Notwithstanding the foregoing, the Settling Performing Defendants shall notify EPA of any change in the schedule described in the monthly progress reports for the performance of data collection no later than thirty (30) days prior to the performance of such activity.

41. Upon the occurrence of any event during performance of the Work that Settling Performing Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Performing Defendants shall within twenty-four (24) hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the EPA Region III Hotline at (215) 814-3255. These reporting requirements are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

42. Within twenty (20) days of the onset of such an event, Settling Performing Defendants shall furnish to the EPA Project Coordinator a written report, signed by the Settling Performing Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Performing Defendants shall submit a report setting forth all actions taken in response thereto.

43. Settling Performing Defendants shall submit four (4) copies of all plans, reports, and data required by the Remedial Design Work Plans, the Remedial Action Work Plans, or any other approved plans for OU-1 and OU-2 to EPA in accordance with the schedules set forth in such plans. Settling Performing Defendants shall simultaneously submit one (1) copy of all such

plans, reports, and data to the State. Upon written request by EPA, Settling Performing Defendants shall submit in electronic form all portions of any report or other deliverable Settling Performing Defendants are required to submit pursuant to the provisions of this Consent Decree.

44. All reports and other documents submitted by Settling Performing Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Performing Defendants' compliance with the terms of this Consent Decree shall be signed by a Duly Authorized Representative of the Settling Performing Defendants.

XII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

45. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Performing Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Performing Defendants at least one notice of deficiency and an opportunity to cure within thirty (30) days, or such other time as specified by EPA in such notice, 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 to EPA a bad faith lack of effort to submit an acceptable deliverable.

46. In the event of approval, approval upon conditions, or modification by EPA, pursuant to

Paragraph 45(a), (b), or (c), Settling Performing Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 45(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXI (Stipulated Penalties).

47. a. Upon receipt of a notice of disapproval pursuant to Paragraph 45(d), Settling Performing Defendants shall, within thirty (30) days, or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the thirty (30)-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 48 and 49.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 45(d), Settling Performing Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Performing Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

48. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Performing Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify

or develop the plan, report or other item. Settling Performing 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 XX (Dispute Resolution).

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

50. 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, except to the extent that any modified portion is successfully challenged under Section XX (Dispute Resolution).

XIII. PROJECT COORDINATORS

51. The EPA Project Coordinator and Alternate Project Coordinator for this Site are:

EPA Project Coordinator:

RASHMI MATHUR (3HS22)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814-5234 (phone)
(215) 814-3002 (telefax)

EPA Alternate Project Coordinator:

LINDA DIETZ (3HS22)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814-3195 (phone)
(215) 814-3002 (telefax)

The initial Project Coordinator for Settling Performing Defendants shall be:

W. David Fennimore PG
Earth Data Northeast, Inc.
924 Springdale Drive
Exton, PA 19341
(610) 524-9466 (phone)
(610) 524-9482 (fax)
email: dfennimore@earthdatane.com

The initial Alternate Project Coordinator for Settling Performing Defendants shall be:

Tom Morris, P.E.
IBM Corporation
Route 100, Building 2
MD2393
Somers, NY 10589
(914) 766-2739 (phone)
(914) 766–2824 (fax)
email: morrist@us.ibm.com

The Settling Performing Defendants' initial Project Coordinator and initial Alternate Project Coordinator have been accepted by EPA. 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 (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made, subject to Section XIX (Force Majeure). Such successor Project Coordinator or Alternate Project Coordinator shall be subject to acceptance or disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Performing Defendants' Project Coordinator and Alternate Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. The Settling Performing Defendants' Project Coordinator and Alternate Project Coordinator may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

52. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's 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 and 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.

53. EPA's Project Coordinator and the Settling Performing Defendants' Project Coordinator will meet, at a minimum, on a monthly basis, to review the progress of the Work pursuant to this Consent Decree.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

54. Settling Performing Defendants shall demonstrate their ability to complete the Work and to pay all claims that arise from performance of the Work, by either the method set forth in Paragraph 54.a. or the method set forth in Paragraph 54.b. herein:

a. Within thirty (30) days after the entry of this Consent Decree, Settling Performing Defendants shall establish and maintain financial security in the amount of $19,500,000 in one or more of the following forms:

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

(2) one or more irrevocable letters of credit equaling the total estimated cost of the Work;

(3) a trust fund;

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

(5) a demonstration that one or more of the Settling Performing Defendants satisfy the requirements of 40 C.F.R. § 264.143(f) (NOTE: For these purposes, references in 40 C.F.R. § 264.143(f) to "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" shall mean the amount of

financial security specified above). If the Settling Performing Defendants who seek to provide a demonstration under 40 C.F.R. § 264.143(f) are providing a similar demonstration at other RCRA or CERCLA sites, the amount for which they are providing financial assurance at those other sites shall be added to the estimated costs of the Work from this paragraph.
Such financial security shall be maintained by the Settling Performing Defendants until EPA agrees that the Work has been completed and issues a Certification of Completion in accordance with Paragraph 59.b. The amount of financial security may be reduced in accordance with Paragraph 56.

b. Within thirty (30) days after the entry of this Consent Decree, Settling Performing Defendants shall provide to EPA a copy of the most recent Form 10-K filing that any one of the Settling Performing Defendants has submitted to the United States Securities and Exchange Commission ("SEC"), and annually thereafter within thirty (30) days after the filing of such document with the SEC, demonstrating that such Settling Performing Defendant has: (i) a net worth of not less than $2,000,000,000; (ii) working capital of not less than $500,000,000; (iii) a debt to equity ratio of not more than 4.0; and (iv) at least ninety percent (90%) of the assets which are used to calculate items (i), (ii) and (iii) are located in the United States. Settling Performing Defendants shall continue to submit such SEC filings to EPA until receipt of EPA's Certification of Completion of the Work pursuant to Section XV of this Consent Decree.

c. If, after providing a submission pursuant to Paragraph 54.b., such Settling Performing Defendant: (i) files a Form 8-K, 10-Q or 10-K with the SEC, indicating that it no longer meets the criteria described in Paragraph 54.b.; (ii) is no longer required by the SEC to file a Form 8-K, 10-Q or 10-K; or (iii) fails to timely file a Form 8-K, 10-Q or 10-K, Settling

Performing Defendants shall, within ten (10) days of such event, either (1) provide to EPA another Settling Performing Defendant's Form 10-K for the most current year, and every year thereafter until receipt from EPA of EPA's Certification of Completion of the Work, demonstrating satisfaction of the criteria in Paragraph 54.b. above; or (2) establish and maintain financial security in the amount of $19,500,000, in the manner set forth in Paragraph 54.a.

55. a. If the Settling Performing Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 54.a.(4) of this Consent Decree, Settling Performing Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Performing Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 54.a.(4) or 54.a.(5), they shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the Effective Date. If the Settling Performing Defendants seek to demonstrate their ability to complete the Work through the use of more than one of the forms identified under Paragraph 54.a., the choice of such forms shall be limited to those in Paragraphs 54.a.(1), (2), and/or (3).

b. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Performing Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 54.a. of this Consent Decree.

c. Settling Performing Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

56. If Settling Performing Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 54.a. above, after entry of this Consent Decree, Settling Performing Defendants may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under Paragraph 54.a. to the estimated cost of the remaining Work to be performed. Settling Performing Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Performing Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

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

XV. CERTIFICATION OF COMPLETION

58. Completion of the Remedial Action

a. Within ninety (90) days after Settling Performing Defendants conclude that the Remedial Action for each specific OU-1 and OU-2 has been fully performed and the Performance Standards consistent with this Consent Decree for that OU have been attained, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be

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

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action for that OU, or any portion thereof, has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards for that OU. Provided, however, that EPA may only require Settling Performing 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 OU-1 ROD," and/or the "scope of the remedy selected in the OU-2 ROD"as those terms are defined in Paragraph 14. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Performing Defendants to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

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

59. Completion of the Work

a. Within ninety (90) days after Settling Performing Defendants conclude that all phases of the Work for each OU (including O & M and excluding Remedy Review for each OU-1 and OU-2), has been fully performed, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants and EPA.

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

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

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work for that OU has not been completed in accordance with this Consent Decree, EPA will notify Settling Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Work for that OU. Provided, however, that EPA may only require Settling Performing 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 OU-1 ROD" or the "scope of the remedy selected in the OU-2 ROD," as those terms are defined in Paragraph 14. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Performing Defendants to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Performing Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to

invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

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

XVI. EMERGENCY RESPONSE

60. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Performing Defendants shall, subject to Paragraph 61, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Performing Defendants shall notify the EPA Region III Hotline at (215) 814-3255. Settling Performing 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 this Consent Decree. In the event that Settling Performing Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Performing Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Payments for Response Costs).

61. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to (a) 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) 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 XXII (Covenants Not to Sue by Plaintiff).

XVII. PAYMENTS FOR RESPONSE

62. [RESERVED]

63. Payments for Future Response Costs

Settling Performing Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On an annual basis, the United States will send Settling Performing Defendants a bill requiring payment that includes a cost summary, setting forth direct and indirect costs incurred by EPA, DOJ, and their contractors. Settling Performing Defendants shall make all payments within sixty (60) days of Settling Performing Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 64. EPA agrees to make available copies of non-confidential accounting records used by EPA to prepare its accounting, relating to oversight costs for which EPA seeks reimbursement and which are in EPA's custody. Settling Performing Defendants shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," and referencing the name and address of the party making the payment,

EPA Site/Spill ID No. #0306, and DOJ Case Number 90-112-410/3. Settling Performing Defendants shall send the check(s) to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, or such other address to be provided by EPA, and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. Future Response Costs paid by Setting Performing Defendants pursuant to this Paragraph 63 shall be deposited in the Spectron 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.

64. Settling Performing Defendants may contest payment of any Future Response Costs under Paragraph 63 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within sixty (60) days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Performing Defendants shall within the sixty (60) day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 63. Simultaneously, the Settling Performing Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Maryland and remit to that escrow account funds equivalent to the amount of the contested

Future Response Costs. The Settling Performing Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Performing Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within fifteen (15) days of the resolution of the dispute, the Settling Performing Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 63. If the Settling Performing Defendants prevail concerning any aspect of the contested costs, the Settling Performing Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 63; Settling Performing Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Performing Defendants' obligation to reimburse the United States for its Future Response Costs.

65. In the event that the payments required by Paragraph 63 are not made within sixty (60) days of the Settling Performing Defendants' receipt of the bill, Settling Performing Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date payment was due. The Interest shall accrue through the date of the Settling

Performing Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Performing Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 81. The Settling Performing Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 63.

66. Payment by Settling Non-Performing Defendants

As negotiated between Settling Defendants, each Settling Non-Performing Defendant shall pay to Settling Performing Defendants, within thirty (30) days after this Consent Decree is lodged with the Court, all monies necessary to satisfy the Settling Performing Defendants' claims for contribution against the Settling Non-Performing Defendant arising pursuant to this Consent Decree with respect to OU-1 and OU-2. In the event a Settling Non-Performing Defendant fails to make timely payment under this Paragraph 66, such Settling Non-Performing Defendant shall pay Interest on the unpaid balance to Settling Performing Defendants, or as provided under a separate agreement between the Settling Non-Performing Defendant and the Settling Performing Defendants. Interest shall begin to accrue on the date payment was due. Payments of Interest made under this Paragraph 66 shall be in addition to such other remedies or sanctions available to Plaintiff or Settling Performing Defendants by virtue of Settling Non-Performing Defendants' failure to make timely payment under this Paragraph, including, but not limited to, payment of stipulated penalties pursuant to Paragraph 80.b.

XVIII. INDEMNIFICATION AND INSURANCE

67. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Performing Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Performing 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 Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Performing Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Furthermore, the Settling Performing 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 Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Performing Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Performing Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Performing Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 67.a., and shall

consult with Settling Performing Defendants prior to settling such claim.

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

69. No later than fifteen (15) days before commencing any on-site Work, Settling Performing Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action for OU-1 or OU-2, whichever occurs later, pursuant to Paragraph 58.b. of Section XV (Certification of Completion) comprehensive general liability insurance with limits of Five Million dollars, combined single limit, and automobile liability insurance with limits of $500,000, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Performing Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Performing Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling

Performing Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Performing Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date of this Consent Decree. If Settling Performing Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Performing Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Settling Performing Defendants may satisfy the provisions of this Paragraph 69 if they submit to EPA for approval one of the financial assurance mechanisms of Section XIV (Assurance of Ability to Complete Work) in at least the amounts stated in this Paragraph 69 demonstrating that Settling Performing Defendants are able to pay any claims arising out of Settling Performing Defendants' performance of their obligations under this Consent Decree. Such financial assurance mechanism shall meet all of the requirements of Section XIV (Assurance of Ability to Complete Work). If Settling Performing Defendants seek to utilize the mechanisms set forth in Section XIV (Assurance of Ability to Complete Work) to satisfy the provisions of this Paragraph 69, they must demonstrate an ability to pay the amounts required under this Paragraph, above and beyond that required by the obligations of Section XIV (Assurance of Ability to Complete Work).

XIX. FORCE MAJEURE

70. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Performing Defendants, of any entity controlled by Settling Performing Defendants, or of Settling Performing Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Performing Defendants' best efforts to fulfill the obligation. The requirement that the Settling Performing 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 (a) as it is occurring, and (b) 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, a failure to attain the Performance Standards, or increased costs. This Section XIX, and the procedures set forth hereunder, shall also be available to the Settling Non-Performing Defendants with respect to requirements applicable to Settling Non-Performing Defendants under Paragraph 66 of Section XVII (Payments for Response) and Paragraph 80.b. of Section XXI (Stipulated Penalties).

71. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Performing Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the EPA Region III Hazardous Site Cleanup Division, within two (2) working days of when Settling Performing Defendants first knew that the event might cause a delay. Within five (5) working days thereafter, Settling Performing Defendants shall provide in

writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Performing Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Performing Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Performing Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Performing Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Performing Defendants shall be deemed to know of any circumstance of which Settling Performing Defendants, any entity controlled by Settling Performing Defendants, or Settling Performing Defendants' contractors knew or should have known.

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

Performing Defendants in writing of the length of the extension for performance of the obligations affected by the force majeure event.

73. If the Settling Performing Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Performing Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Performing Defendants complied with the requirements of Paragraphs 70 and 71, above. If Settling Performing Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Performing Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

74. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Performing Defendants that have not been disputed in accordance with this Section. Further, the procedures set forth under this Section shall not apply to any Settling Non-Performing Defendant, except to the extent necessary to resolve a dispute concerning such Settling Non-Performing Defendant's liability for stipulated penalties, pursuant to Paragraph 80.b.

a. Within thirty (30) days of issuance of the OU-2 ROD, the Settling Performing Defendants may refer to dispute resolution the question of whether the true present worth cost of the OU-2 remedy exceeds the cost estimate threshold of $10 million set forth in Section V, Paragraph 6.b. of this Consent Decree. The Settling Performing Defendants shall prevail in dispute resolution on this question, and thereby be relieved of their obligation to perform the OU-2 remedy under this Consent Decree, if and only if they are able to demonstrate that the true present worth cost of the OU-2 remedy will exceed $10 million cost estimate threshold. EPA's remedy selection for OU-2 shall not otherwise be subject to dispute resolution nor shall the Settling Performing Defendants otherwise have the right to affirmatively seek judicial review of the selection of the OU-2 remedy.

75. 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 twenty (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 upon receipt by a party of a written Notice of Dispute.

76. 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 twenty (20) days after the conclusion of the informal negotiation period, Settling Performing Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Performing Defendants. The Statement of

Position shall specify the Settling Performing Defendants' position as to whether formal dispute resolution should proceed under Paragraph 77 or Paragraph 78.

b. Within twenty (20) days after receipt of Settling Performing Defendants' Statement of Position, EPA will serve on Settling Performing 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 77 or 78. Within ten (10) days after receipt of EPA's Statement of Position, Settling Performing Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Performing Defendants as to whether dispute resolution should proceed under Paragraph 77 or 78, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Performing 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 77 and 78.

77. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree.

Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the OU-1 ROD's or OU-2 ROD's provisions.

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

b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 77.a. This decision shall be binding upon the Settling Performing Defendants, subject only to the right to seek judicial review pursuant to Paragraph 77.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 77.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Performing Defendants with the Court and served on all Parties (except for Settling Non-Performing Defendants, if the dispute does not affect their rights or obligations) within twenty (20) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Performing Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Performing Defendants shall have the burden of demonstrating that the decision of the Director of the Hazardous Site Cleanup Division, EPA Region III, 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 77.a.

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

a. Following receipt of Settling Performing Defendants' Statement of Position submitted pursuant to Paragraph 76, the Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final decision resolving the dispute. The Director's decision shall be binding on the Settling Performing Defendants unless, within twenty (20) days of receipt of the decision, the Settling Performing Defendants file with the Court and serve on the Parties (except for Settling Non-Performing Defendants, if the dispute does not affect their rights or obligations) a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Performing 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.

79. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Performing 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 88. Notwithstanding the

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

XXI. STIPULATED PENALTIES

80. a. Settling Performing Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 81 and 82 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Performing Defendants shall include 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, 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. Settling Non-Performing Defendants shall be liable for stipulated penalties, in the amounts set forth in Paragraph 82.a., to the United States solely for failure to comply with Paragraph 66 of Section XVII (Payments for Response Costs), unless excused under Section XIX (Force Majeure) or determined not to be payable pursuant to Section XX (Dispute Resolution). With respect to stipulated penalties under this Paragraph 80.b., references to Settling Performing Defendants in Paragraphs 84, 85, 86, 88 and 89, below, shall also include Settling Non-Performing Defendants, but solely with respect to failure to comply with Paragraph 66 of this Consent Decree or the assessment of stipulated penalties pursuant to this Paragraph 80.b.

81. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 81.b.:

Penalty Per Violation Per Day	***Period of Noncompliance***
$ 1,500.00	1st through 14th day
$ 4,000.00	15th through 30th day
$ 8,000.00	31st day and beyond

b. Failure to comply with requirements of Section VI (Performance of the Work by Settling Performing Defendants), Section VII (Remedy Review), Section IX (Quality Assurance, Sampling, and Data Analysis), Section XII (EPA Approval of Plans and Other Submissions), Section XVI (Emergency Response), and Section XVII (Payments for Response Costs), except Paragraph 66 (Payment by Settling Non-Performing Defendants).

82. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 82.b.:

Penalty Per Violation Per Day	***Period of Noncompliance***
$ 500.00	1st through 14th day
$ 1,000.00	15th through 30th day
$ 1,500.00	31st day and beyond

b. All requirements of this Consent Decree that are not identified or are excepted in Paragraph 81.b. of this Consent Decree.

83. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 97 of Section XXII (Covenants Not to Sue by Plaintiff), Settling Performing Defendants shall be liable for a stipulated penalty in the amount of $500,000. This provision

shall not apply to EPA's financing and performing any remedy pursuant to the OU-2 ROD in the event that Settling Performing Defendants decline performance of the OU-2 remedy pursuant to Paragraph 6.b.ii.

84. 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 XII (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Performing Defendants of any deficiency; (2) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 77.b. or 78.a. of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Performing Defendants' reply to EPA's Statement of Position is received until the date that the Director of the Hazardous Site Cleanup Division, EPA Region III, issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XX (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.

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

Settling Performing Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Performing Defendants of a violation.

86. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Settling Performing Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Performing Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments to the United States under this Section shall be paid by corporate, certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 125251-6515 or such other address to be provided by EPA, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #0306, the DOJ Case Number 90-112-410/3, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

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

88. Penalties shall continue to accrue as provided in Paragraph 84 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 fifteen (15) days of the agreement or thirty (30) days of receipt of EPA's decision or order;

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

c. If the District Court's decision is appealed by any Party, Settling Performing 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 sixty (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 sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall be instructed to pay the prevailing party in a manner consistent with the final judgment.

89. a. If Settling Performing Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Performing Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 86.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Performing 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 for any particular violation of this Consent Decree,

the United States shall be limited to either demanding stipulated penalties pursuant to this Section XXI of the Consent Decree or pursuing civil penalties pursuant to Section 122(l) of CERCLA, except in the case of a willful violation of the Consent Decree.

90. 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.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

91. Covenants for OU-1. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 96 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA for OU-1 and for recovery of Past Response Costs and Future Response Costs. As to the Settling Performing Defendants, the covenants not to sue set forth in this Paragraph 91 shall take effect upon the Effective Date and are conditioned upon the satisfactory performance by Settling Performing Defendants of their obligations under this Consent Decree. As to the Settling Non-Performing Defendants, the covenants not to sue set forth in this Paragraph 91 shall take effect, as to each Settling Non-Performing Defendant, upon complete payment by that Settling Non-Performing Defendant of its payment to Settling Performing Defendants pursuant to Paragraph 66 of this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

92. Covenants for OU-2 - the Site. a. If the Settling Performing Defendants finance and

perform the Work in accordance with the OU-2 ROD pursuant to Paragraph 6, then, 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 93, 94 and 96 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.

b. If the Settling Performing Defendants finance and perform the Work in accordance with the OU-2 ROD pursuant to Paragraph 6, these covenants not to sue for the Site shall take effect upon Certification of Completion of the Remedial Action for OU-2, pursuant to Paragraph 58.b. of Section XV (Certification of Completion).

c. These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

93. United States' Pre-Certification Reservations for OU-2. Notwithstanding any other provision of this Consent Decree, if the Settling Performing Defendants finance and perform the Work in accordance with the OU-2 ROD pursuant to Paragraph 6, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action for OU-2 by EPA pursuant to Paragraphs 58:

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

(ii) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action for OU-1 or OU-2 is not protective of human health or the environment.

94. United States' Post-Certification Reservations for OU-2. Notwithstanding any other provision of this Consent Decree, if the Settling Performing Defendants finance and perform the Work in accordance with the OU-2 ROD pursuant to Paragraph 6, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action for OU-2:

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

(ii) information, previously unknown to EPA, is received, in whole or in part, and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action for OU-1 or OU-2 is not protective of human health or the environment.

95. For purposes of Paragraph 93 the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the OU-2 ROD was signed and set forth in the OU-1 ROD and OU-2 ROD and the administrative records supporting those RODs. For purposes of Paragraph 94, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the

date of the Certification of Completion of the Remedial Action for OU-1 or OU-2, whichever occurs later, and set forth in the OU-1 ROD and OU-2 ROD, the administrative records supporting those RODs, the post-ROD administrative records, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action for OU-2.

96. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraphs 91 and 92. 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 covenants not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

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

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

(3) liability based 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 such activities as provided in the OU-1 ROD or the OU-2 ROD if Settling Performing Defendants finance and perform the Work in accordance with the OU-2 ROD pursuant to Paragraph 6, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;

(4) criminal liability;

(5) liability for violations of federal or state law which occur during or after implementation of the Remedial Action for OU-1;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action for OU-2, if Settling Performing Defendants finance and perform the Work in accordance with the OU-2 ROD pursuant to Paragraph 6;

(7) liability, prior to Certification of the Remedial Action for OU-1, for additional response actions that EPA determines are necessary to achieve Performance Standards for OU-1 but that cannot be required pursuant to Paragraph 14 (Modification of the Work);

(8) liability, prior to Certification of the Remedial Action for OU-2, if the Settling Performing Defendants finance and perform the Work in accordance with the OU-2 ROD pursuant to Paragraph 6, for additional response actions that EPA determines are necessary to achieve Performance Standards for OU-2 but that cannot be required pursuant to Paragraph 14 (Modification of the Work);

(9) claims for the performance of, or to reimburse the costs of, Response Actions for OU-2 in the event that the Settling Performing Defendants decline performance of an OU-2 ROD remedy pursuant to Paragraph 6.b.ii; and

(10) liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

97. Work Takeover. In the event EPA determines that Settling Performing Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or

any portions of the Work as EPA determines necessary. Settling Performing Defendants may invoke the procedures set forth in Section XX (Dispute Resolution), Paragraph 77, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph, but not costs to finance or perform any remedy pursuant to the OU-2 ROD in the event Settling Performing Defendants decline performance of the OU-2 remedy pursuant to Paragraph 6.b.ii., shall be considered Future Response Costs that Settling Performing Defendants shall pay pursuant to Section XVII (Payment for Response Costs).

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

XXIII. COVENANTS BY SETTLING DEFENDANTS

99. Covenants Not to Sue for OU-1. Subject to the reservations in Paragraph 101, 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 OU-1, past response actions, Past Response Costs and Future Response Costs as defined herein, 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 §§ 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; or

d. any direct or indirect claim for disbursement from the Spectron Site Special Account or the Spectron Site Disbursement Special Account (established pursuant to this Consent Decree), except as provided in Section XXXVII (Disbursement of Special Account Funds).

100. Covenants Not to Sue for OU-2 - the Site. If Settling Performing Defendants finance and perform the Work in accordance with the OU-2 ROD pursuant to Paragraph 6 and subject to the reservations in Paragraph 101, 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 §§ 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;

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; or

d. any direct or indirect claim for disbursement from the Spectron Site Special Account or the Spectron Site Disbursement Special Account (established pursuant to this Consent Decree), except as provided in Section XXXVII (Disbursement of Special Account

Funds).

101. 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 or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, 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 Settling Performing 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.

102. 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).

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

treatment of hazardous substances at the Site if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 865 gallons of liquid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

b. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person that has entered into a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the Site as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

104. Except as provided in Paragraph 103.a. (waiver of claims against *de micromis* parties) and Paragraph 103.b. (waiver of claims against *de minimis* parties), 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. Except as provided in Paragraph 103.a. (waiver of claims against de micromis parties) and Paragraph

103.b. (waiver of claims against de minimis parties), 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 to this Consent Decree.

105. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is 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. Nothing contained herein shall prevent Settling Defendants from suing one another for failing to comply with the terms of any private agreement to fund the Work or perform other obligations under this Consent Decree.

106. 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 sixty (60) days prior to the initiation of such suit or claim.

107. 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 ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

108. 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 XXII (Covenants Not to Sue by Plaintiff).

XXV. ACCESS TO INFORMATION

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

110. a. Settling Performing 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), or 40 C.F.R. Part 2, Subpart 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 Performing Defendants that the documents or

information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Performing Defendants.

b. The Settling Performing Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by any applicable law. If the Settling Performing 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 Performing 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.

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

XXVI. RETENTION OF RECORDS

112. Until six (6) years after the Settling Performing Defendants' receipt of EPA's notification pursuant to Paragraph 59.b. of Section XV (Certification of Completion of the Work) for the final Remedial Action required to be implemented pursuant to this Consent Decree, each

Settling Performing 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. Each Settling Performing 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 Settling Performing 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 required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

113. At the conclusion of this document retention period, Settling Performing Defendants shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Performing Defendants shall deliver any such records or documents, other than privileged records or documents under Paragraph 110.b. or this Paragraph to EPA . If the United States has not responded to Settling Performing Defendants' notice prior to the time Settling Performing Defendants intend to destroy the records or documents, Settling Performing Defendants shall provide an additional written notice that such records and documents will be destroyed, unless EPA provides otherwise after receiving such notice. The Settling Performing 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 Performing Defendants assert such a privilege, they shall follow the procedures set out in Paragraph 110.b. 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.

114. Each Settling Performing 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 Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVII. NOTICES AND SUBMISSIONS

115. 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:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ # 90-11-2-410/3

As to EPA:

Humane L. Zia
Senior Assistant Regional Counsel (3RC41)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

and

Rashmi Mathur
EPA Project Coordinator (3HS22)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to the State:

Kim LeMaster
State Project Coordinator
Maryland Department of the Environment
Waste Management Administration
1800 Washington Boulevard - Suite 625
Baltimore, MD 21230

and

Michael Slattery
Assistant Secretary for Resource Conservation
Maryland Department of Natural Resources
580 Taylor Avenue, C-4
Annapolis, MD 21401

As to the Settling Performing Defendants:

W. David Fennimore, PG
Settling Performing Defendants' Project Coordinator
Earth Data Northeast, Inc.
924 Springdale Drive
Exton, PA 19341

As to the Settling Non-Performing Defendants:

Guy V. Johnson, Esquire
E.I. du Pont de Nemours and Company
1007 Market Street
Wilmington, DE 19898

XXVIII. EFFECTIVE DATE

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

XXIX. RETENTION OF JURISDICTION

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

XXX. APPENDICES

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

"Appendix A" is the September 2004 OU-1 ROD.

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

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

"Appendix D" is the Draft Easement.

"Appendix E" is the summary of costs referred to in the definition of "Past Response Costs."

XXXI. COMMUNITY RELATIONS

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

XXXII. MODIFICATION

120. Schedules specified in this Consent Decree for completion of the Work, and for submission of progress reports in Paragraph 39, may be modified by agreement of the EPA Project Coordinator and the Settling Performing Defendants. All such modifications shall be made in writing.

121. Except as otherwise provided in this Paragraph, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Performing Defendants, Settling Non-Performing Defendants (with respect to those provisions affecting their rights or obligations) and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to any Remedial Design Work Plan, Remedial Action Work Plan, and any other plan or submission approved by EPA under this Consent Decree that do not materially alter the requirements of those documents may be made by written agreement between the EPA Project Coordinator, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Performing Defendants. Modifications to the Work made pursuant to Paragraph 14 ("Modification of the Work") may be made by EPA. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

notice.

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

XXXIV. SIGNATORIES/SERVICE

124. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

125. 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.

126. 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. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXV. RELATIONSHIP BETWEEN ADMINISTRATIVE SETTLEMENT AGREEMENT AND CONSENT DECREE

127. The United States and the Settling Performing Defendants have agreed that certain portions of the Work shall commence in accordance with an Administrative Settlement Agreement and Order on Consent for Remedial Design, EPA Docket No.CERC-03-2006-0155DC ("RD Settlement Agreement"), prior to the Effective Date. In addition, certain Settling Performing Defendants have been performing response actions under an Administrative Order by Consent, Docket No. III-91-40-DC ("AOC"). Upon the Effective Date, and as set forth in Section III of the RD Settlement Agreement, the RD Settlement Agreement and the AOC (collectively the "Settlement Agreements") shall terminate. It is agreed by the Parties, that upon termination of the Settlement Agreements due to entry of this Consent Decree, performance of work commenced under the Settlement Agreements shall continue under this Consent Decree in accordance with the EPA-approved schedules and requirements developed under the Settlement Agreements. To the extent that Settling Performing Defendants have fulfilled obligations under the Settlement Agreements that are also required by this Consent Decree, Settling Performing Defendants shall also be deemed to have fulfilled such obligations under this Consent Decree.

XXXVI. FINAL JUDGMENT

128. This Consent Decree and its appendices constitute 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. 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.

XXXVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

129. Creation of Spectron Site Disbursement Special Account and Agreement to Disburse Funds to Settling Performing Defendants. Within thirty (30) days after the Effective Date, EPA shall transfer $500,000 from the Spectron Site Special Account to the Spectron Site Disbursement Special Account, which has been or will be established within the EPA Hazardous Substance Superfund. In addition, 100% of the monies EPA receives as a result of the Second Round Global De Minimis Settlement, in *United States v. Air Products and Chemicals, et al.*, Civil No. 1:06-CV-00038-AMD (D. Md.), shall be deposited into the Spectron Site Disbursement Special Account. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the Spectron Site Disbursement Special Account, including Interest Earned on the funds in the Spectron Site Disbursement Special Account, available for disbursement to Settling Performing Defendants as partial reimbursement for performance of the Work under this Consent Decree. EPA shall disburse funds from the Spectron Site Disbursement Special Account to Settling Performing Defendants in accordance with the procedures and milestones for phased disbursement set forth in this Section XXXVII.

130. Timing, Amount and Method of Disbursing Funds From the Spectron Site Disbursement Special Account. Within ninety (90) days of EPA's receipt of a Cost Summary

and Certification, as defined by Paragraph 131.b., or if EPA has requested additional information under Paragraph 131.b. or a revised Cost Summary and Certification under Paragraph 131.c., within ninety (90) days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section XXXVII, EPA shall disburse the funds from the Spectron Site Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below:

Milestone	**Disbursement of Funds**
1. EPA approval of the OU-2 Remedial Design Work Plan, if a remedial action is selected for OU-2 and Settling Performing Defendants perform the OU-2 remedy pursuant to Paragraph 6	50% of funds from the Spectron Site Disbursement Special Account
2. EPA approval of the OU-2 Remedial Action Work Plan, if a remedial action is selected for OU-2 and Settling Performing Defendants perform the OU-2 remedy pursuant to Paragraph 6	60% of remaining funds from the Spectron Site Disbursement Special Account
3. EPA issuance of the Certification of Completion of the Remedial Action for OU-2, if a remedial action is selected and Settling Performing Defendants perform the OU-2 remedy pursuant to Paragraph 6	The balance of funds remaining in the Spectron Site Disbursement Special Account

EPA shall disburse the funds from the Spectron Site Disbursement Special Account to the Settling Performing Defendants in the following manner:

Deutsche Bank Trust Company Americas
Corporate Trust & Agency Services
Mail Stop: NYC60-2710
60 Wall Street, 27th Floor
New York, NY 10005

wiring instructions:

Deutsche Bank Trust Company Americas
ABA 021-001-033
Acct # 01419647 - CTAS
Reference: Galaxy Spectron Superfund Site

131. Requests for Disbursement of Special Account Funds.

a. Within thirty (30) days of issuance of EPA's written confirmation that a milestone of the Work, as defined in Paragraph 130, has been satisfactorily completed, Settling Performing Defendants shall submit to EPA a Cost Summary and Certification, as defined in Paragraph 131.b., covering the Work performed pursuant to this Consent Decree up to the date of completion of that milestone. Settling Performing Defendants shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously reimbursed pursuant to Paragraph 130.

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Settling Performing Defendants for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 132. Each Cost Summary and Certification shall contain the following statement signed by the Chief Financial Officer of a Settling Performing Defendant, a certified public accounting firm retained by the Settling Performing Defendants or other person acceptable to EPA:

"To the best of my knowledge, after thorough investigation and review of Settling Performing Defendants' documentation of costs incurred and paid for Work performed

pursuant to this Consent Decree **[insert, as appropriate, "up to the date of completion of milestone 1," "between the date of completion of milestone 1 and the date of completion of milestone 2," "between the date of completion of milestone 2 and the date of completion of the milestone 3," etc.].** I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment."

The Chief Financial Officer of a Settling Performing Defendant or other person acceptable to EPA shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Settling Performing Defendants shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

c. If EPA finds that a Cost Summary and Certification includes a mathematical accounting error, costs excluded under Paragraph 132, costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, EPA will notify Settling Performing Defendants and provide an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Settling Performing Defendants fail to cure the deficiency within thirty (30) days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Settling Performing Defendants' costs eligible for disbursement for that submission and disburse the corrected amount to Settling Performing Defendants in accordance

with the procedures in Paragraph 130 of this Section XXXVII. Settling Performing Defendants may dispute EPA's recalculation under this Paragraph pursuant to Section XX (Dispute Resolution). In no event shall Settling Performing Defendants be disbursed funds from the Spectron Site Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

132. Costs Excluded from Disbursement. The following costs are excluded from, and shall not be sought by Settling Performing Defendants for, disbursement from the Spectron Site Disbursement Special Account: (a) response costs paid pursuant to Section XVII; (b) any other payments made by Settling Performing Defendants to the United States pursuant to this Consent Decree, including, but not limited to, any interest or stipulated penalties paid pursuant to Sections XXI (Stipulated Penalties), or any payments pursuant to Section XXXVIII (Resolution of Natural Resource Damage Claims); (c) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to Settling Performing Defendants' performance of the Work (e.g., obtaining access or implementing Institutional Controls) as required by Section X; (d) costs of any response activities Settling Performing Defendants perform that are not required under, or approved by EPA pursuant to, this Consent Decree; (e) costs related to Settling Performing Defendants' litigation, settlement, development of potential contribution claims or identification of defendants; (f) internal costs of Settling Performing Defendants including, but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Settling Performing Defendants directly performing the Work; (g) any costs incurred by Settling Performing Defendants prior to the Effective Date, except for approved Work completed

pursuant to this Consent Decree; or (h) any costs incurred by Settling Performing Defendants pursuant to Section XX (Dispute Resolution).

133. Termination of Disbursements from the Special Account. EPA's obligation to disburse funds from the Spectron Site Disbursement Special Account under this Consent Decree shall terminate upon EPA's determination that Settling Performing Defendants: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within thirty (30) days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by Paragraph 131 within thirty (30) days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section XXXVII because of Settling Performing Defendants' failure to submit the Cost Summary and Certification as required by Paragraph 131. EPA's obligation to disburse funds from the Spectron Site Disbursement Special Account also shall terminate upon EPA's receipt of Settling Performing Defendants' written notification pursuant to Paragraph 6.b.ii, declining performance of the OU-2 remedy, if one is selected in the OU-2 ROD; or upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 97, when such assumption of performance of the Work is not challenged by Settling Performing Defendants or, if challenged, is upheld under Section XX (Dispute Resolution). Settling Performing Defendants may dispute EPA's termination of special account disbursements under Section XX (Dispute Resolution).

134. Recapture of Special Account Disbursements. Upon termination of disbursements from the Spectron Site Disbursement Special Account under Paragraph 133, if EPA has previously disbursed funds from the Spectron Site Disbursement Special Account for activities specifically related to the reason for termination (*e.g.*, discovery of a materially false or misleading submission after disbursement of funds based on that submission), EPA shall submit a bill to Settling Performing Defendants for those amounts already disbursed from the Spectron Site Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Settling Performing Defendants. Within thirty (30) days of receipt of EPA's bill, Settling Performing Defendants shall reimburse the Hazardous Substance Superfund for the total amount billed by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment, EPA Site/Spill Identification No. 0306, and DOJ Case No. 90-112-410/3. Settling Performing Defendants shall send the check(s) to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, or such other address to be provided by EPA, and shall send copies of the check(s) to the United States as specified in Section XXVII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. Upon receipt of payment, EPA may deposit all or any portion thereof in the Spectron Site Special Account, the Spectron Site Disbursement Special Account, or the Hazardous Substance Superfund. The determination of where to deposit or how to use the funds

shall not be subject to challenge by Settling Performing Defendants pursuant to Section XX (Dispute Resolution) or in any other forum. Settling Performing Defendants may dispute EPA's determination as to recapture of funds pursuant to Section XX (Dispute Resolution).

135. Balance of Special Account Funds. After EPA completes all disbursement(s) to Settling Performing Defendants in accordance with this Section XXXVII, if any funds remain in the Spectron Site Disbursement Special Account, EPA may transfer such funds to the Spectron Site Special Account or to the Hazardous Substance Superfund. Any transfer of funds to the Spectron Site Special Account or the Hazardous Substance Superfund shall not be subject to challenge by Settling Performing Defendants pursuant to Section XX (Dispute Resolution) or in any other forum.

XXXVIII. RESOLUTION OF NATURAL RESOURCE DAMAGE CLAIMS

136. Payment. Within thirty (30) days after the Effective Date of this Consent Decree, Settling Performing Defendants shall pay the Trustees the sum of FIVE HUNDRED AND SEVEN THOUSAND THREE HUNDRED DOLLARS ($507,300.000), as follows:

a. $445,600.00 to the DOI, on behalf of the State and federal Trustees for the purposes set forth in subparagraphs 136.a.(3) and (4) below, by Electronic Funds Transfer ("EFT") in accordance with instructions to be provided to Settling Performing Defendants by the DOI upon the lodging of this Consent Decree. A transmittal letter indicating that the EFT has occurred shall be sent to the Parties in accordance with Section XXVII ("Notices and Submissions") and to:

Bruce Nesslage, DOI Funds Manager
United States Department of the Interior
Natural Resource Damage Assessment and Restoration Program
1849 C Street, NW
Mail Stop 4449
Washington, DC 20240

and

Marcia F. Gittes
Office of the Northeast Regional Solicitor
United States Department of the Interior
One Gateway Center, Suite 612
Newton, MA 02458.

The EFT and transmittal letter shall reflect that the payment is being made to the "Natural Resources Damage Assessment and Restoration Fund, Account No.14X5198 - Spectron CERCLA Site." The DOI will assign these funds a special project number to allow them to be maintained as a segregated account within the DOI Natural Resource Damage Assessment and Restoration Fund, Account No.14X5198 (the "Spectron CERCLA Site NRD Account" or the "Account").

(i) The DOI shall, in accordance with law, manage and invest funds in the Spectron CERCLA Site NRD Account and any return on investments or interest accrued on the Account shall be used by the Natural Resource Trustees in connection with Restoration of Natural Resources impacted by the releases of hazardous substances from the Site. The DOI shall not make any charge against the Spectron CERCLA Site NRD Account for any investment or management services provided.

(ii) The DOI shall hold all funds in the Spectron CERCLA Site NRD Account, including return on investments or accrued interest, subject to the provisions of this Consent Decree and any agreement that may be entered into by the Natural Resource Trustees.

(iii) The Natural Resource Trustees commit to the expenditure of the funds set forth in this Paragraph 136.a. for the design, implementation, permitting (as necessary), monitoring, and oversight of Restoration projects, and for the costs of complying with the requirements of the law to conduct a Restoration planning and implementation process.

(iv) The details for specific project(s) will be contained in a Restoration plan proposal or proposals to be developed jointly by the Natural Resource Trustees. In allocating monies for Restoration projects, the Trustees shall take into consideration their preliminary determination of the injuries caused by the releases of hazardous substances from the Site and their desire to implement Restoration project(s) in the State of Maryland. The final Restoration plan will be prepared and implemented jointly by the Trustees, after providing public notice, opportunity for public input, and consideration of any public comment. The Trustees jointly retain the ultimate authority and responsibility to use the funds in the Spectron CERCLA Site NRD Account to Restore Natural Resources in accordance with applicable law, this Consent Decree and any agreement entered into by the Trustees. Settling Defendants shall not be entitled to dispute, in any other forum or proceeding, any decision related

to use of funds or Restoration efforts under this Consent Decree.

b. $11,700.00 to the DOI for Damage Assessment Costs incurred by DOI. The DOI Damage Assessment Costs shall be paid in accordance with the procedure outlined in Paragraph 136.a. above. The EFT and transmittal letter shall reflect that the payment is being made to the "Natural Resources Damage Assessment and Restoration Fund, Account No.14X5198 - Spectron CERCLA Site DOI Assessment Costs."

c. $50,000.00 to NOAA, for Damage Assessment Costs incurred by NOAA, by EFT in accordance with instructions to be provided to Settling Performing Defendants by NOAA upon the lodging of this Consent Decree. A transmittal letter indicating that the EFT has occurred shall be sent to the Parties in accordance with Section XXVII ("Notices and Submissions") and to:

NOAA/NOS/OR&R
ATTN: Kathy Salter, DARRF Manager
1305 East West Highway
SSMC4, Room 9331
Silver Spring, MD 20910-3281

and

Sharon Shutler
NOAA Office of General Counsel for Natural Resources
1305 East West Highway
SSMC3, Room 15107
Silver Spring, MD 20910-3281.

137. Stipulated Penalties for Natural Resource Damages. In the event that any payment required by this Section is not made within thirty (30) days of entry of this Consent Decree by the Court, Settling Performing Defendants shall be in violation of this Consent Decree and shall pay,

as a stipulated penalty, $500.00 per day for each day that payment is not received. Such stipulated penalties shall be due and payable within thirty (30) days of the demand for payment of penalties by the United States. All payments under this Paragraph 137 shall be identified as "stipulated penalties" and shall be made to the United States by certified check made payable to "U.S. Department of Justice." Such payments shall include a reference to the "Spectron Site - Stipulated Penalties" and be mailed to:

Financial Litigation Unit
Office of the United States Attorney
36 South Charles Street
Fourth Floor
Baltimore, Maryland 21201

At the time of payment, Settling Performing Defendants shall send notice of such payment to the Trustees at the addresses specified above, in this Section XXXVIII, and to the United States as provided in Paragraph 115. Penalties shall accrue as provided in this Section regardless of whether the United States has notified Settling Performing Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree, however, Settling Performing Defendants shall not be liable for the simultaneous accrual of stipulated penalties under this Section XXXVIII and Section XXI (Stipulated Penalties) for the same violation. Payments under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Performing Defendants' failure to comply with the requirements of this Consent Decree. Notwithstanding

any other provision of this Consent Decree, the United States may, in its own unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Settling Performing Defendants shall be liable for attorneys' fees and costs incurred by the United States to collect any amount due under this Consent Decree that is not timely paid.

138. Covenant Not to Sue for Natural Resource Damages. Except as specifically provided by Paragraph 139 (Special Reservations Regarding Natural Resource Damages), the United States and the State, through MDE and MDNR, covenant not to sue the Settling Defendants for Natural Resource Damages pursuant to CERCLA Section 107, 42 U.S.C. § 9607. The covenant not to sue shall take effect upon the DOI's and NOAA's receipt of the Settling Performing Defendants' payments pursuant to Paragraph 136 of this Consent Decree. This covenant not to sue is conditioned upon the satisfactory performance by the Settling Performing Defendants' of their obligations under this Section XXXVIII.

139. Special Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve the right to institute proceedings against the Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, including costs of damage assessment, based on: (1) conditions with respect to the Site, unknown to the Trustees as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources; or (2) information received by the Trustees after the date of lodging of this Consent Decree that indicates that releases of hazardous substances at the

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Agere Systems, Inc., et al., relating to the Spectron Superfund Site.

FOR THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF JUSTICE

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FOR THE STATE NATURAL RESOURCE TRUSTEES
STATE OF MARYLAND DEPARTMENT OF ENVIRONMENT

_____

HORACIO TABLADA
Director, Waste Management Administration

FOR THE STATE NATURAL RESOURCE TRUSTEES
STATE OF MARYLAND DEPARTMENT OF NATURAL RESOURCES

MICHAEL SLATTERY
Assistant Secretary for Resource Conservation