IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	**Civil Action No. _____**
v.	:	
	:	
SEQUA CORPORATION AND	:	
JOHN H. THOMPSON,	:	
	:	
Defendants.	:	

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SEQUA CORPORATION AND JOHN H. THOMPSON,	:	
	:	
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"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

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 Dublin TCE Superfund Site ("Site") located at or near 120 Mill Street, Borough of Dublin, Bucks County, Pennsylvania, and (2) performance of studies and response work by the defendants at the Site, consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Pennsylvania (the "State") on July 29, 2003, of negotiations with potentially responsible parties regarding the implementation of the Remedial

Design and Remedial Action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of the Interior on August 7, 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, or this Section I, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. Nothing contained herein shall be construed or interpreted as an admission by Settling Defendants on any issue of law, fact, or liability.

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 August 30, 1990, 55 Fed. Reg. 35502.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, and pursuant to an administrative Order on Consent for Remedial Investigation/Feasibility Study, Docket No. III-91-70-DC, Settling Defendants, commenced on or about August 15, 1991, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

H. Settling Defendants completed a Remedial Investigation ("RI") Report on December 4,

1998; a Baseline Risk Assessment on July 8, 1999; and a Feasibility Study ("FS") Report on March 14, 2001.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for Remedial Action on June 15, 2001, 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 to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 9, 2002, on which the State has given its concurrence. The 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. On August 3, 2004, an Explanation of Significant Difference was published, pursuant to Section 117(c) of CERCLA, explaining the differences which significantly changed but did not fundamentally alter the remedy selected in the ROD.

L. Based on the information presently available to EPA, EPA believes that the Work, as required under this Consent Decree, will be properly and promptly conducted by Settling 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 ROD and the Work, as required under this Consent Decree, to be performed by Settling Defendants shall constitute a response action taken or ordered by the President.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

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

III. PARTIES BOUND

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

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree.

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

IV. DEFINITIONS

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

"BLRA" shall mean the Baseline Risk Assessment.

"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 XXXI). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Contingent Remedial Action" shall mean the components of the remedy, as set forth in the ROD at pages 49-51, Section L, "Selected Remedy," to be implemented to address the contamination at the Site in the event that EPA determines that the ISCO Remedial Action failed or will fail to meet and maintain all of the ISCO Remedial Action Performance Standards.

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

"Contingent Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 15(d) of this Consent Decree and approved by EPA, and any amendments thereto. Because this component of the remedy is contingent upon the results of ISCO implementation, design efforts have been deferred until the need for this remedial component is determined in accordance with Paragraph 11 of this Consent Decree.

"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.

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

"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 XXIX of this Consent Decree.

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

"Explanation of Significant Differences" or "ESD" shall mean the published document explaining the differences which significantly change but do not fundamentally alter the remedy

selected in the ROD with respect to scope, performance or cost. The ESD is attached hereto as Appendix E.

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling 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 VIII (Remedy Review), X (Access and Institutional Controls), XVI (Emergency Response), and Paragraph 105 of Section XXIII (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 XXI (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 VIII, 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 (Emergency Response), and Paragraph 105 of Section XXIII (Work Takeover). Future Response Costs shall also include all Interim Response Costs and all Interest on those Past Response Costs Settling Defendants have agreed to reimburse under this Consent Decree that has accrued pursuant to 42 U.S.C. §

9607(a) during the period from December 1, 2003 to the date of entry of this Consent Decree.

"Institutional Controls" shall mean those measures that are instituted to control the use of land, such as easements, covenants, title notices, and land use restrictions through orders from or agreements with EPA, to prevent the use of the Site in any manner that would interfere with implementation of or adversely affect the integrity or protectiveness of the selected remedy. Those institutional controls include, but are not limited to, measures to provide for worker safety and a prohibition on use of the Site for residential purposes. Institutional controls also include, but are not limited to, a prohibition on the installation and/or use of groundwater wells, unless those activities are necessary to implement the selected remedy. Those institutional controls include, but are not limited to, those controls set forth in Paragraphs 32(b) and 32(c) of this Consent Decree, and also as set forth in Appendix B of this Consent Decree.

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between December 1, 2003 and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date. Interim Response Costs shall also include Interest that has accrued on the Settlement Amount, under paragraph 61, between December 1, 2003 and the date of payment of the Settlement Amount.

"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.

"ISCO Remedial Action (In Situ Chemical Oxidation)" shall mean the components of the

selected Remedy set forth in the ROD at pages 49-51, Section L, "Selected Remedy" relating to the implementation of the "In-situ treatment of the source area contamination." The ISCO Remedial Action shall also include any augmentation, expansion, or equivalent measures or technology, and optimization of the ISCO technology that EPA selects or requires to demonstrate compliance with or to meet the ISCO Remedial Action Performance Standards. Those measures expressly may include significant changes to the remedy in scope, performance or cost, within the meaning of 40 C.F.R. § 300.435(c)(2).

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

"ISCO Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 14(c) of this Consent Decree and approved by EPA, and any amendments thereto.

"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.

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

"Owner Settling Defendant" shall mean John H. Thompson.

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

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

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States has paid at or in connection with the Site through December 1, 2003 and which are identified in the summary of costs attached hereto as Appendix C, 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, 1) set forth on pages 54 - 58 of the ROD, attached hereto as Appendix A, 2) set forth in the Remedial Design Work Plan and 3) those that are developed by Settling Defendants and approved by EPA during Remedial Design.

"Plaintiff" shall mean the United States.

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Operable Unit #2 at the Site signed on September 9, 2002, by the Regional Administrator, EPA Region III, or his/her delegate, and all attachments thereto, including the differences in remedy set forth in the ESD. The ROD is attached as Appendix A. In the event of conflict between the ROD and this Decree, including the Remedial Design Work Plan, the ROD shall control.

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

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

"Remedial Design Work Plan" shall mean the document, referenced in Paragraph 14(a) and 15(b) of this Consent Decree, approved by EPA, and attached hereto as Appendix D, along with any amendments thereto. In the event of conflict between the ROD and Remedial Design Work Plan, the ROD shall control. Specifically, the remedy selected in the ROD has not been limited, in any way, by the inclusion of the Remedial Design Work Plan in the CD.

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

"Settlement Amount" shall mean the amount Settling Defendants are required to pay pursuant to Paragraphs 61 (Payments for Past Response Costs) and 62 (Payments for Future Response Costs) of this Consent Decree.

"Settling Defendants" shall mean Sequa Corporation and John H. Thompson.

"Site" shall mean the Dublin TCE Superfund Site, located at or near 120 Mill Street, Borough of Dublin, Bucks County, Pennsylvania and depicted in the ROD.

"State" shall mean the Commonwealth of Pennsylvania.

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

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

"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 Defendants are required to perform under this Consent Decree, except those required by Section XXVII (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

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

6. Commitments by Settling Defendants

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

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

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

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be

performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD. 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 area of 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 Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

9. Notice of Obligations to Successors-in-Title

a. With respect to any property owned or controlled by the Owner Settling Defendant that is located within the Site, within fifteen (15) days after the entry of this Consent Decree, the Owner Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder of Deeds or other appropriate office, Bucks County, State of Pennsylvania, which shall

provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on September 9, 2002, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notices shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant shall record the notices within ten (10) days of EPA's approval of the notices. The Owner Settling Defendant shall provide EPA with a certified copy of the recorded notices within ten (10) days of recording such notices.

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

c. In the event of any such conveyance, the Owner Settling Defendant's obligations

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

VI. SETTLING DEFENDANTS' OBLIGATION TO PERFORM SITE WORK
(Implementation of the ISCO Remedial Action and, if Required by EPA, the Contingent Remedial Action)

10. Pursuant to the ROD and the ISCO Remedial Action Work Plan, and as required by the Consent Decree, Settling Defendants shall perform the ISCO Remedial Action (In Situ Chemical Oxidation) and the ISCO Remedial Action Operation and Maintenance.

11. As provided in the Explanation of Significant Difference (ESD) to the ROD, three (3) years following the entry of this Consent Decree, EPA will conduct a performance review to determine whether the ISCO Remedial Action will meet or maintain the Performance Standards. If EPA determines that the ISCO Remedial Action and/or the ISCO Remedial Action Operation and Maintenance has failed or will fail to meet and maintain the Performance Standards, EPA may issue a determination of remedy failure. Such determination shall be in writing. Settling Defendants may seek review of EPA's determination that the ISCO Remedial Action and/or ISCO Remedial Action Operation and Maintenance has failed or will fail to meet and maintain the Performance Standards, through the dispute resolution provisions of Section XXI. If EPA prevails in Dispute Resolution, or if there is no dispute, concerning EPA's determination, EPA will notify Settling Defendants in

writing that they are to implement the Contingent Remedial Action, as set forth in the ROD and as required by this Consent Decree. Such notice shall be provided within thirty (30) days of either the date of (1) issuance of EPA's determination of the ISCO Remedial Action failure; or (2) EPA's prevailing on a dispute concerning its determination of the ISCO Remedial Action failure, whichever is later.

12. In the event that the Contingent Remedial Action is implemented, Paragraph 15 shall also apply. EPA's selection of the Contingent Remedial Action, the components of the remedy, as set forth in the ROD at pages 49-51, Section L, "Selected Remedy," shall not be subject to judicial review, through the dispute resolution procedures of Section XXI or otherwise.

VII. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

13. Selection of Contractors

a. Supervising Contractor

i. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VII (Performance of the Work by Settling Defendants), VIII (Remedy Review), IX (Quality Assurance, Sampling, and Data Analysis), and XVI (Emergency Response) of this Consent Decree with respect to both the ISCO Remedial Action and, if required by EPA, the Contingent Remedial Action, shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to acceptance or disapproval by EPA. Within fifteen (15) days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. Additionally, Paragraph 15.b. shall govern the time frame for such notification regarding the Supervising Contractor for the Contingent Remedial Action, if required by EPA.

With respect to any contractor proposed to be Supervising Contractor, Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "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 Supervising Contractor. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA 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.

ii. If EPA disapproves the selection of a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling 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 Defendants may select any contractor from that list and shall notify EPA of the name of the contractor selected within twenty-one (21) 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 Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling

Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree.

b. Other Contractors and Subcontractors

i. Settling Defendants shall submit to EPA for acceptance by EPA 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 Defendants' selections, the proposal for additional contractors and subcontractors shall be deemed accepted. In the event EPA disapproves any proposed contractor or subcontractor, Settling 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 ten (10) 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 Defendants may select any contractor or subcontractor from that list and shall notify EPA of the name of the contractor or subcontractor selected within five (5) days of EPA's written notice.

14. Remedial Design/ISCO Remedial Action

a. Settling Defendants have submitted to EPA a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan provides for the design of the remedy set forth in the ROD and for achievement of the Performance Standards and other requirements set forth in the ROD and this Consent Decree.

EPA has approved portions of the Remedial Design Work Plan.[1] The Remedial Design Work Plan is incorporated into and enforceable under this Consent Decree.

b. Settling Defendants shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Settling Defendants shall submit to EPA all plans, submittals, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).

c. Upon approval, approval with conditions, or modification by EPA, as provided in Section XI (EPA Approval of Plans and Other Submissions), of all components of the final design submittal, the final design submittal shall serve as the ISCO Remedial Action Work Plan and shall be enforceable under this Consent Decree. Settling Defendants shall implement the activities required under the ISCO Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

d. Settling Defendants shall submit all plans, submittals, or other deliverables required under the ISCO Remedial Action Work Plan in accordance with the approved schedule 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, Settling Defendants shall not commence physical activities at the Site prior to the date for commencement set forth in the approved schedule in the ISCO Remedial Action Work Plan.

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[1] Although Respondent has provided EPA with a Complete Work Plan and EPA has approved the majority of the proposed Work Plan, EPA has yet to approve the Quality Assurance Project Plan, the Field Sampling Plan and the Health and Safety Project Plan, and therefore final approval by EPA of these remaining sections of the Work Plan is required prior to the implementation of the selected remedy.

15. Remedial Design/Contingent Remedial Action, if Required By EPA

a. Within fifteen (15) days after Settling Defendants' receipt of EPA's notification of ISCO Remedial Action failure and to perform the Contingent Remedial Action, pursuant to paragraph 11 above, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor for the Contingent Remedial Action pursuant to subsection 13 above.

b. Settling Defendants have submitted to EPA a work plan for the design of the Contingent Remedial Action at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan provides for the design of the remedy set forth in the ROD and for achievement of the Performance Standards and other requirements set forth in the ROD and this Consent Decree. EPA has approved the Remedial Design Work Plan. The Remedial Design Work Plan is incorporated into and enforceable under this Consent Decree. In the event of conflict between the Remedial Design Work Plan and the ROD, the ROD shall control.

c. Settling Defendants shall implement the Remedial Design Work Plan for the Contingent Remedial Action in accordance with the schedules and methodologies contained therein. Settling Defendants shall submit to EPA all plans, submittals, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions).

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 submittal, the final design submittal shall serve as the Contingent Remedial Action Work

Plan and shall be enforceable under this Consent Decree. Settling Defendants shall implement the activities required under the Contingent Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

e. Settling Defendants shall submit all plans, submittals, or other deliverables required under the Contingent Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Following EPA's determination of ISCO Remedial Action failure, pursuant to the provisions of paragraph 11 above, and unless otherwise directed by EPA or required under the Remedial Design Work Plan, Settling Defendants shall not commence physical activities at the Site prior to the date for commencement set forth in the approved schedule in the Contingent Remedial Action Work Plan.

16. Each and every Section of this Consent Decree shall apply to the ISCO Remedial Action and to the Contingent Remedial Action, if EPA determines that the Contingent Remedial Action should be implemented under the terms of this Consent Decree and the ROD.

17. 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 the final design submittal, and prior to commencement of any on-Site Work under the ISCO Remedial Action Work Plan and, if required by EPA, the Contingent Remedial Action Work Plan, Settling 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 is performed in accordance with the approved ISCO Remedial Action Work Plan and, if required by EPA, the Contingent Remedial

Action Work Plan. The Resident Engineer shall be familiar with all aspects of the Remedial Design approved by EPA. EPA retains the right to disapprove the use of any Resident Engineer proposed by Settling Defendants. In the event EPA disapproves the use of any proposed Resident Engineer, Settling Defendants shall submit to EPA a list of at least three replacements, including the qualifications of each, who would be acceptable to them within five (5) days of receipt of EPA's notice. EPA will provide written notice of the names of any replacements whose use it would accept. Settling Defendants may select any replacement from the EPA notice and shall notify EPA of the name of the replacement selected within three (3) days of EPA's written notice. Settling Defendants shall ensure that the Resident Engineer performs on-Site inspections as necessary to ensure compliance with the approved ISCO Remedial Action Work Plan and, if required by EPA, the Contingent Remedial Action Work Plan and that the results of such inspections are promptly provided to Settling Defendants and EPA. The Resident Engineer may act as the QA Official.

18. Settling Defendants shall continue to implement the ISCO Remedial Action, ISCO Remedial Action Operation & Maintenance and, if required by EPA, the Contingent Remedial Action and Contingent Remedial Action Operation & Maintenance, until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

19. 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 the ROD, EPA may (1) require that such modification be incorporated into the

Remedial Design/ISCO Remedial Action Work Plan, ISCO Operation and Maintenance Plan, and, if required by EPA, the Contingent Remedial Action Work Plan and Contingent Operation and Maintenance Plan, and/or any other plan relating to such Work, and/or (2) require that Settling Defendants submit a plan for EPA approval which incorporates such modification to the Work and implement such approved plan. 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 ROD.

b. For the purposes of this Paragraph 19 and Paragraphs 57 and 58 only, the "scope of the remedy selected in the ROD" means:

i. tasks employing a technology or combination of technologies discussed in Section L of the ROD to achieve and maintain the objectives described in the ROD. The technologies discussed in Section L of the ROD include:

a. In-situ treatment of the source area. It is anticipated that chemical oxidation will be the technology used for the in-situ treatment, also referred to as "in situ chemical oxidation ("ISCO").

b. The contingency technology for the source area is ground water pump and treat using air stripping to reduce the volatile organic compounds (VOCs) contaminating the ground water. This technology may also be required in the dissolved plume.

ii. tasks associated with monitoring of Site conditions and the effectiveness

of the Remedial Action.

iii. implementation of institutional controls, as defined herein.

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XXI (Dispute Resolution), Paragraph 86 (record review). The Remedial Design/Remedial Action Work Plans, ISCO Operation and Maintenance Plan and, if required by EPA, the Contingent Remedial Action Work Plan and Contingent Operation and Maintenance Plan, and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the Remedial Design/ISCO Remedial Action Work Plan, ISCO Operation and Maintenance Plan and, if required by EPA, the Contingent Remedial Action Work Plan and the Contingent Operation and Maintenance Plan, and/or in work plans developed in accordance with this Paragraph.

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

20. Settling Defendants acknowledge and agree that nothing in this Consent Decree or the Remedial Design/ISCO Remedial Action Work Plans and, if required by EPA, the Contingent Remedial Action Work Plan, 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.

21. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state

environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

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

i. the name and location of the facility to which the Waste Material is to be shipped;

ii. the type and quantity of the Waste Material to be shipped;

iii. the expected schedule for the shipment of the Waste Material; and

iv. the method of transportation.

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

b. The identity of the receiving facility and state will be determined by Settling Defendants following the award of the contract for Remedial Action construction. Settling Defendants shall provide the information required by Paragraph 21.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 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 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.

VIII. REMEDY REVIEW

22. Periodic Review

Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment, at least every five (5) years as required by Section 121(c) of CERCLA and any applicable regulations.

23. Performance Review

As provided in the Explanation of Significant Difference (ESD) to the ROD, three (3) years following the entry of this Consent Decree, a performance review will be conducted by the EPA to determine the efficacy of the ISCO technology to meet and maintain the Performance Standards. Settling Defendants will present all relevant data to EPA for review, including, but not limited to, sampling data in the source area, temporal trends for TCE concentrations within the source area, temporal trends of TCE concentrations in the downgradient dissolved-phase plume, and temporal trends relative to dissolved TCE mass flux from the source area.

24. EPA Selection of Further Response Actions

If EPA determines, at any time, that the ISCO Remedial Action or, if required by EPA, the Contingent Remedial Action, is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

25. Opportunity To Comment

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

26. Settling Defendants' Obligation To Perform Further Response Actions

If EPA selects further response actions for the Site, Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 101 or Paragraph 102 (United States' reservations of liability based on unknown conditions or new information) are satisfied. If EPA requires Settling Defendants to undertake such further actions pursuant to this Paragraph, Settling Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 101 or Paragraph 102 of Section XXIII (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 86 (record review).

27. Submissions of Plans

If Settling Defendants are required to perform the further response actions pursuant to Paragraph 26, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VII (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

28. While conducting all sample collection and analysis activities required by this Consent Decree, Settling 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 Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval 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 Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall

ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Settling 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 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 Defendants shall conduct, or allow EPA to conduct, one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the QAPP. 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. Settling 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 Settling Defendants knew or should have known of the deficiency.

29. Upon request, Settling Defendants shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Settling Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary.

Upon request, EPA shall allow Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of Settling Defendants' implementation of the Work.

30. Settling 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 Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

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

X. ACCESS AND INSTITUTIONAL CONTROLS

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

a. commencing on the date of lodging of this Consent Decree, provide the United States 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 105 of this Consent Decree (Work Takeover);

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

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

x. 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, extracting ground water for potable and/or non-potable uses, and inhibiting access to the source area; and

c. if EPA so requests, execute and record in the Recorder of Deeds or other appropriate land records office of Bucks County, Commonwealth of Pennsylvania, 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

32(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 32(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within forty-five (45) days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

i. A draft easement, in substantially the form attached hereto as Appendix B, that is enforceable under the laws of the Commonwealth of Pennsylvania, and

ii. a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder of Deeds or other appropriate office of Bucks County. Within thirty (30) days of recording the easement, such Settling Defendants shall provide EPA with a final title

insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

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

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, 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 32(a) of this Consent Decree;

b. an agreement, enforceable by Settling Defendants and the United States, to 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 extracting ground water for potable and/or non-potable uses, and inhibiting access to the source area ; and

c. if EPA so requests, the execution and recordation with the Recorder of Deeds or other appropriate land records office of Bucks County, the Commonwealth of Pennsylvania, 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 32(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use

restrictions listed in Paragraph 32(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within forty-five (45) days of entry of this Consent Decree, Settling Defendants shall submit to EPA for review and approval with respect to such property:

i. A draft easement, in substantially the form attached hereto as Appendix B, that is enforceable under the laws of the Commonwealth of Pennsylvania; and

ii. a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder of Deeds or other appropriate office of Bucks County. Within thirty (30) days of recording the easement, such Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be

conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

34. For purposes of Paragraph 33 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 33(a) or 33(b) of this Consent Decree are not obtained within forty-five (45) days of the date of entry of this Consent Decree, (b) any access easements or restrictive easements required by Paragraph 33(c) of this Consent Decree are not submitted to EPA in draft form within forty-five (45) days of the date of entry of this Consent Decree, or (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph 32.c.(i) or Paragraph 33.c.(ii) 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 entry of this Consent Decree, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 33 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVII (Payments for Response Costs), for all costs incurred, direct and 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.

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

36. 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

37. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA 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 Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but

not limited to, critical path diagrams, Gantt charts, and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan, to be developed by Settling Defendants, during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA by the tenth day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendants pursuant to Paragraph 58.b of Section XV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

38. Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, implementation of work plans, no later than seven (7) days prior to the performance of the activity. Notwithstanding the foregoing, Settling 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.

39. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Defendants shall within 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.

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

41. Settling Defendants shall submit three (3) copies of all plans, reports, and data required by the Remedial Design/ISCO Remedial Action Work Plan, Remedial Design/Contingent Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Upon request by EPA, Settling Defendants shall submit in electronic form all portions of any report or other deliverable Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

42. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by a Duly Authorized Representative of Settling Defendants. The reports and other documents submitted pursuant to this paragraph shall contain the following statement, signed by a Duly Authorized Representative of a Settling Defendant:

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

XII. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

43. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within fourteen (14) 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.

44. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 43(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXI (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 43(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXII (Stipulated Penalties).

45. a. Upon receipt of a notice of disapproval pursuant to Paragraph 43(d), Settling Defendants shall, within fourteen (14) days, or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXII, shall accrue during the fourteen (14)-day period, or otherwise specified period, but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 46 and 47.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 43(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XXII (Stipulated Penalties).

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

47. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendants invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution) and EPA's action is overturned pursuant to that

Section. The provisions of Section XXI (Dispute Resolution) and Section XXII (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 XXII.

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

XIII. PROJECT COORDINATORS

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

EPA Project Coordinator:

Jill Lowe (3HS21)
U.S. Environmental Protection Agency
1650 Arch Street, Philadelphia, PA 19103-2029
(215) 814-3123 (phone)
(215) 814-3002 (telefax)

EPA Alternate Project Coordinator:

Anthony Dappolone (3HS21)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-3188 (phone)
(215) 814-3002 (telefax)

Within twenty (20) days of lodging this Consent Decree, Settling Defendants will notify EPA, in

writing, of the name, address and telephone number of their designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Settling Defendants' Project Coordinator and 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. Settling Defendants' Project Coordinator and Alternate Project Coordinator shall not be an attorney for any of Settling Defendants in this matter. Settling 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.

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

51. EPA's Project Coordinator and Settling Defendants' Project Coordinator will meet

and/or conference call, at a minimum, on a monthly basis during the construction phase of the Remedial Action and otherwise, or on an as needed basis as determined by EPA.

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

52. Within thirty (30) days of entry of this Consent Decree or by March 30, 2005, whichever is later, Settling Defendants shall establish and maintain financial security in the amount of $1.13 Million in one or more of the following forms:

a. A surety bond guaranteeing performance of the Work;

b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;

c. A trust fund;

d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of Settling Defendants; or

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

f. Such financial security shall be maintained by Settling Defendants until EPA agrees in writing that the Work has been completed and issues a Certification of Completion in accordance with Paragraph 58.b.

53. If Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 52(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by

means of the financial test or the corporate guarantee pursuant to Paragraph 52(d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, within ninety (90) days of the close of Settling Defendants' respective fiscal year. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling 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 52 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

54. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 52 above after entry of this Consent Decree, Settling Defendants may, prior to the due dates set forth in Paragraph 53 above, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon written approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

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

or judicial decision resolving the dispute.

56. In the event that EPA determines that the ISCO Remedial Action has failed or will fail to meet and maintain Performance Standards, EPA will provide written notice to Settling Defendants, pursuant to Paragraph 11 above. Within thirty (30) days after being notified by EPA that the ISCO Remedial Action has failed or will fail and that it is necessary to implement the Contingent Remedial Action, Settling Defendants shall establish and maintain financial security, in accordance with the provisions of Paragraphs 52-55, in an amount equal to EPA's estimated cost of the Contingent Remedial Action.

XV. CERTIFICATION OF COMPLETION

57. Completion of the Remedial Action

a. Within ninety (90) days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report to EPA requesting certification for approval, 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 ("RPE") and Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a RPE. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Defendant or Settling Defendants' Project

Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 19.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XII (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been met, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion

of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXIII (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

58. Completion of the Work

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

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

If, after review of the written report, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 19.b. EPA will set forth in the notice a schedule for performance of such activities

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

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

XVI. EMERGENCY RESPONSE

59. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 60, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendants shall notify the EPA Region III Hotline at (215) 814-3255. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response

action not inconsistent with the NCP pursuant to Section XVII (Payments for Response Costs).

60. 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 XXIII (Covenants Not to Sue by Plaintiff).

XVII. PAYMENTS FOR RESPONSE COSTS

61. Payments for Past Response Costs

Within 30 days of the Effective Date, Settling Defendants shall pay to EPA $252,234.00 in payment for Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2005VOO304, EPA Site/Spill ID Number 03S3, and DOJ Case Number 90-11-2-780/1. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103-2029. At the time of payment, Settling Defendants shall send copies of the check(s) to the

United States as specified in Section XXVIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. The total amount to be paid by Setting Defendants pursuant to paragraph 61 shall be deposited in the Dublin TCE 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.

62. Payments for Future Response Costs

a. Settling Defendants shall pay to EPA all Future Response Costs, excluding all Future Oversight Costs, not inconsistent with the National Contingency Plan. On a periodic basis, the United States will send Settling Defendants a bill requiring payment that includes a cost summary, setting forth direct and indirect costs incurred by EPA, DOJ, and their contractors. Settling Defendants shall make all payments within thirty (30) days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 63. Settling 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 Number 03S3, and DOJ Case Number 90-11-2-780/1. Settling Defendants shall send the check(s) to United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, and shall send copies of the check(s) to the United States as specified in Section XXVIII (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA

19103-2029. The total amount to be paid by Setting Defendants pursuant to paragraph 62 shall be deposited in the Dublin TCE 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.

b. Notwithstanding Paragraph 62.a, Settling Defendants shall be obligated to reimburse the United States for oversight costs incurred in connection with Remedial Design and oversight of Removal Actions only if the decision in United States v. Rohm & Haas Co., No. 92-1517 (3rd Cir. Aug. 12, 1993), regarding the liability of responsible parties under Section 107(a)(4)(A) of CERCLA for EPA oversight costs is reversed or overturned by the Court of Appeals for the Third Circuit, the United States Supreme Court, or the United States Congress through amendment to CERCLA or otherwise. Nothing in this Paragraph 62.b shall be deemed to be an adjudication by this Court or an admission by EPA or the United States or shall be admissible in any other proceeding as to the legal issue whether oversight costs are properly recoverable under Section 107 of CERCLA or pursuant to a settlement of such an action.

63. Settling Defendants may contest payment of any Future Response Costs under Paragraph 62 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 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVIII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 62. Simultaneously,

Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendants shall send to the United States at the address listed at paragraph 62, as provided in Section XXVIII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendants shall initiate the Dispute Resolution procedures in Section XXI (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 62. If Settling Defendants prevail concerning any aspect of the contested costs, Settling 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 62; Settling Defendants shall disburse any balance of the escrow account. The dispute resolution procedures set forth in Section XXI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

64. In the event that the payments required by Paragraph 61 are not made within thirty (30) days of the Effective Date or the payments required by Paragraph 62 are not made within thirty (30) days of Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the

unpaid balance. The Interest to be paid on Past Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 90. Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 62.

XVIII. REIMBURSEMENT AND REQUIREMENTS FOR RISK SHARING

65. Reimbursement for Risk Sharing for Innovative Technology.

EPA has accepted the Dublin TCE Site into the innovative technology risk-sharing program. If EPA subsequently determines that the ISCO Remedial Action and/or the ISCO Remedial Action Operation and Maintenance has failed or will fail to meet and maintain the ISCO Remedial Action Performance Standards and requires Settling Defendants to implement the Contingent Remedial Action, then EPA will endeavor, at its discretion and not subject to dispute resolution, to provide Settling Defendants with funding from EPA. EPA will endeavor to provide such funding, as set forth in Paragraph 66-67 below, in the amount of Settling Defendants' "necessary actual expenditures" in designing and implementing the Contingent Remedial Action, up to a limit of the lesser of: (A) the sum of $915,000; or (B) fifty (50) percent of Settling Defendants' actual Qualified Costs in designing and implementing the ISCO Remedial Action, excluding any costs not directly related to the innovative response action as more fully set forth in Paragraph 66 below..

66. Qualified Costs.

Qualified Costs shall be limited to necessary and actual direct costs expended consistent with the NCP for implementation of the ISCO Remedial Action. Qualified Costs shall exclude, among other indirect costs as EPA shall identify, attorneys fees or costs, costs related to litigation, settlement, or responsible parties search activities, and other internal or transaction costs. EPA's potential obligation to provide funds or other equivalent commitments pursuant to this Section, subject to availability, shall terminate ten years from the date of entry of this Consent Decree.

67. The EPA funds referred to in the foregoing Paragraphs may be provided, at EPA's election, in the form of preauthorized mixed funding pursuant to Sections 111(a)(2), 112, and 122(b)(1) of CERCLA, and 40 C.F.R. 307, mixed work, grants, or other mechanisms.

68. If EPA determines that the ISCO Remedial Action has failed or will fail to meet or maintain ISCO Remedial Performance Standards, Settling Defendants shall account for all Qualified Costs incurred in connection with ISCO Remedial Action and shall document such costs as provided in 40 C.F.R. § 307 and any relevant guidance provided by EPA on cost accounting. Qualified Costs shall not include costs that were incurred for non-innovative components of the ISCO Remedial Action. Settling Defendants shall separate the non-innovative component costs from the Qualified Costs.

69. Settling Defendants shall document their Qualified Costs expended on any Contingent Remedial Action in a manner consistent with any cost accounting requirements needed to obtain the type of funding selected by the EPA. Provision of these funds also is subject to Settling Defendants timely submitting required applications and supporting documentation and complying with any other requirements of the application processes pertaining to such funding or

commitments.

70. If EPA determines, based on its review of the data or other sources of technical information, that the ISCO Remedial Action will not meet or maintain ISCO Remedial Action Performance Standards at the Site, EPA shall provide written notification to Settling Defendants of that determination. Any costs subsequently incurred by Settling Defendants in connection with those components of the ISCO Remedial Action shall not be subject to cost-sharing under this Section. Any determination by EPA pursuant to this Paragraph regarding the date after which costs incurred shall not qualify as "necessary actual expenditures" or Qualified Costs, shall not be subject to Dispute Resolution under this Consent Decree, but shall remain entirely within EPA's discretion.

71. As provided in the Explanation of Significant Difference (ESD) to the ROD, three (3) years following the entry of this Consent Decree, EPA shall evaluate whether the ISCO Remedial Action has failed or will fail to meet and maintain Performance Standards. At this time, EPA may require the implementation of the Contingent Remedial Action if it is determined by EPA that the ISCO Remedial Action Performance Standards will not be met. The EPA shall not be obligated to cost share if EPA determines there are unreasonable delays by Settling Defendants in implementing the ISCO Remedial Action.

72. Settling Defendants shall not postpone or delay the implementation of any Remedial Action pending the commencement or completion of any application process for EPA funds or other commitments under this Section.

73. By their acceptance of the foregoing payments, Settling Defendants agree that in the event the United States takes over the Remedial Action pursuant to Section XXIII, Paragraph 105,

or for other reasons related to Settling Defendants' failure to perform, Settling Defendants shall repay any payment or reimbursement made pursuant to this Section in full. The United States, in the event it takes over the Remedial Action, reserves all its other rights and remedies, under this Consent Decree.

74. Availability of Funds: The provisions in this Section regarding reimbursement and cost-sharing by EPA are subject to the availability of funds in the Hazardous Substance Response Trust Fund (Superfund) at the time Settling Defendants are obligated to implement the Contingent Remedial Action or any portion of it. Nothing in this Section or Consent Decree shall be interpreted or construed as a commitment or requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

XIX. INDEMNIFICATION AND INSURANCE

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

all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States .

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 75.a., and shall consult with Settling Defendants prior to settling such claim.

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

77. No later than fifteen (15) days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain 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 additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Settling Defendants may satisfy the provisions of this Paragraph 77 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 77 demonstrating that Settling Defendants are able to pay any claims arising out of Settling 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 Defendants seek to utilize the mechanisms set forth in Section XIV (Assurance of Ability to Complete Work) to satisfy the provisions of this Paragraph 77, 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).

XX. FORCE MAJEURE

78. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (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.

79. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Settling Defendants shall 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 forty-eight (48) hours of when Settling Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendants' rationale for attributing such

delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

80. 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 on an expedited basis. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

81. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XXI (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating

by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 78 and 79, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XXI. DISPUTE RESOLUTION

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

83. There shall be no dispute resolution or any other judicial review of (1) EPA's selection of the components of the remedy, as set forth in the ROD at pages 49-51, Section L, "Selected Remedy," as the Contingent Remedial Action; (2) any refusal or failure by EPA to declare failure of the ISCO Remedial Action or the ISCO Remedial Action Operation and Maintenance; and (3) any other matters for which this Decree expressly states there will be no dispute resolution or judicial review. Settling Defendants may use the procedures in this Section to dispute, *inter alia*, any determination by EPA that the ISCO Remedial Action and/or the ISCO Remedial Action Operation and Maintenance has failed or will fail to meet or maintain the ISCO Remedial Action Performance Standards. The dispute resolution procedures (and any related obligations) as set

forth in this Section shall apply only to the Settling Defendant who initiates these procedures.

84. Any dispute, except as provided under paragraph 83, 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 when one party sends the other parties a written Notice of Dispute.

85. 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 ten (10) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 86 or Paragraph 87.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 86 or 87. Within seven (7) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 86 or 87, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 86 and 87.

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

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 86.a. This decision shall be binding upon Settling Defendants, subject only to the

right to seek judicial review pursuant to Paragraph 86c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 86.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the 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 86.a.

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

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 85, 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 Settling Defendants unless, within ten (10) days of receipt of the decision, Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the

schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding sub-paragraph M, in reference to judicial review under Section 113(j) of CERCLA, 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.

88. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 97. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXII (Stipulated Penalties).

XXII. STIPULATED PENALTIES

89. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 90 and 91 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX (Force Majeure). "Compliance" by Settling 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.

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

Penalty Per Violation Per Day	***Period of Noncompliance***
$ 3,500.00	1st through 14th day
$5,000.00	15th through 30th day
$7,000.00	31st day and beyond

b. Failure to comply with requirements of Section VII (Performance of the Work by Settling Defendants), Section VIII (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).

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

Penalty Per Violation Per Day	***Period of Noncompliance***
$750.00	1st through 14th day
$ 1,500.00	15th through 30th day
$ 2,000.00	31st day and beyond

b. All requirements of this Consent Decree that are not identified in Paragraph 90(b) of this Consent Decree.

92. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 105 of Section XXIII (Covenants Not to Sue by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of $200,000.00

93. 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 Defendants of any deficiency; (2) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 86.b. or 87.a. of Section XXI (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director 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 XXI (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.

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

95. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section

XXI (Dispute Resolution). All payments to the United States under this Section shall be paid by 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, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region Site/Spill ID Number 03S3, the DOJ Case Number 90-11-2-780/1, 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 XXVIII (Notices and Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

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

97. Penalties shall continue to accrue as provided in Paragraph 93 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 the 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 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 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 pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

98. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 95.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(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 XXII 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.

99. 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.

XXIII. COVENANTS NOT TO SUE BY PLAINTIFF

100. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 101, 102, and 104 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 and Section 7003 of RCRA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 61 of Section XVII (Payments for Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 57.b of Section XV (Certification of Completion). 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 Settling Defendants and do not extend to any other person.

101. United States' Pre-Certification Reservations

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

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

b. 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 is not protective of human health or the environment.

102. United States' Post-Certification Reservations

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

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

b. 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 is not protective of human health or the environment.

103. For purposes of Paragraph 101, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 102, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

104. General reservations of rights

The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 100. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

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

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

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

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

e. criminal liability;

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

g. liability, prior to Certification of Completion of the Remedial Action, for

additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 19 (Modification of the Work); and

h. liability for any costs not reimbursed within this Consent Decree or costs to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

105. Work Takeover

In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XXI (Dispute Resolution), Paragraph 86, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVII (Payment for Response Costs).

106. 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.

XXIV. COVENANTS BY SETTLING DEFENDANTS

107. Covenant Not to Sue

Subject to the reservations in Paragraph 108, 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 Work, past response actions, and Past and Future Response Costs as defined in 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 Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law. Except as provided in Paragraph 110(a) (Waiver of Claims Against De Micromis Parties) and Paragraph 115 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 101, 102, 104(2) - (4) or 104(7) - (11), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

108. 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 Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

109. 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).

110. 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:

Waiver of Claims Against De-Micromis Parties

a. 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) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

XXV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

111. Except as provided in Paragraph 110 (Waiver of Claims Against De Micromis 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 110 (Waiver of Claims Against De Micromis 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 hereto.

112. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The "matters addressed" in this settlement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site, provided that matters addressed shall not include any matter as to which the United States has reserved its rights in this Consent Decree.

113. 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.

114. 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.

115. 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 XXIII (Covenants Not to Sue by Plaintiff).

XXVI. ACCESS TO INFORMATION

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

117. a. Settling Defendants may assert business confidentiality claims covering part or

all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), 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 Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

118. 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.

XXVII. RETENTION OF RECORDS

119. Until ten (10) years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 58.b of Section XV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work; provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

120. At the conclusion of this document retention period, Settling 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 Defendants shall deliver any such records or documents to EPA. If the United States has not responded to Settling Defendants' notice prior to the time Settling Defendants intend to destroy the records or documents, Settling

Defendants shall deliver all such records and documents to EPA no earlier than ten (10) days after providing an additional written notice that such records and documents will be delivered, unless EPA provides otherwise after receiving such notice. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

XXVIII. NOTICES AND SUBMISSIONS

122. 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 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 # 90-11-2-780

As to EPA:

Jefferie E. Garcia
Assistant Regional Counsel (3RC42)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Jill Lowe
EPA Project Coordinator (3HS21)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

As to the State:

Grant Morehead
State Project Coordinator
Pennsylvania Department of Environmental Protection
Suite 6010, Lee Park
555 North Lane
Conshohocken, PA 19428

As to Settling Defendants:

Sequa Corporation
Brent C. Murray
Settling Defendants' Project Coordinator
14255 U.S. Highway No. 1
Suite 2150
Juno Beach, FL 33408

and

Drinker Biddle & Reath LLP
Christopher W. Boyle, Esq.
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103

John H. Thompson
c/o Thompson Toyota, Incorporated
122 Swamp Road
Doylestown, PA 18901

and

Eastburn & Gray, P.C.
Jay H. Karsch, Esq.
60 E. Court Street
PO Box 1389
Doylestown, PA 18901

XXIX. EFFECTIVE DATE

123. 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.

XXX. RETENTION OF JURISDICTION

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

XXXI. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the Draft Easement.

"Appendix C" is the EPA approved Remedial Design Work plan.

"Appendix D" is the ESD.

XXXII. COMMUNITY RELATIONS

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

sponsored by EPA to explain activities at or relating to the Site.

XXXIII. MODIFICATION

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

128. 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 Defendants, and the Court. Modifications to the Remedial Design/ISCO Remedial Action Work Plan, and if required by EPA, the Remedial Design/Contingent Remedial Action Work Plan, and any other plan 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 and Settling Defendants. Modifications to the Work made pursuant to Paragraph 19 ("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.

XXXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

129. 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. Commenters may request an opportunity for public meeting in the affected area, in accordance with Section 7003(d) of RCRA. 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.

130. 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.

XXXV. SIGNATORIES/SERVICE

131. Each undersigned representative of a Settling Defendant to this Consent Decree and the Section Chief or Deputy Section Chief of the Environmental Enforcement Section, 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.

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

133. 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.

XXXVI. FINAL JUDGMENT

134. 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 Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2005.

_____
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. SEQUA CORPORATION and JOHN H. THOMPSON, relating to the Dublin TCE Superfund Site.

FOR THE UNITED STATES OF AMERICA:

_____

W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

_____

NATHANIEL DOUGLAS
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

_____

Assistant United States Attorney
Eastern District of Pennsylvania
Office of the United States Attorney
615 Chestnut Street
Philadelphia, PA 19106

DONALD S. WELSH
Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

WILLIAM C. EARLY
Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

JEFFERIE E. GARCIA
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

FOR SEQUA CORPORATION:

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Dublin TCE Superfund Site.

_____ _____
[Signature] {date}

Please Type the Following:

Name: _____

Title: _____

Address: _____

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

[Please Type]____

Name: _____
Title: _____
Address: _____
Tel. Number: _____

FOR JOHN H. THOMPSON:

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the Dublin TCE Superfund Site.

_____ _____
[Signature] {date}

Please Type the Following:

Name: _____

Title: _____

Address: _____

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

Name: _____
Title: _____
Address: _____
Tel. Number: _____

_____