UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. FLURA CORPORATION, and EDWARD TYCZKOWSKI, Defendant.	Civil Action No. 2:04CV200

CONSENT DECREE

WHEREAS, Flura Corporation ("Flura") is a specialty manufacturer of organic flourine chemicals at its facility located at 610 Rock Hill Road, Newport, Cocke County, Tennessee ("Facility");

WHEREAS, in its operations, Flura uses a number of chemicals, ranging from acids, caustics, volatile organic compounds, halogenated compounds and a variety of gases in canisters and tanks;

WHEREAS, at all times relevant hereto, Dr. Edward Tyczkowski was the President of Flura;

WHEREAS, on March 23, 1999, personnel from the Tennessee Department of Environmental Conservation ("TDEC") and the United States Environmental Protection Agency ("EPA") conducted an inspection of the Facility;

WHEREAS, the findings and results of the inspection were documented in an April 6, 1999, Notice of Violation ("NOV") from TDEC which cited violations for: failure to make proper hazardous waste determinations on all rejected chemical products, chemicals in the storage areas including gases, which were decaying, and all unknown chemicals; storage of hazardous

waste without a permit; failure to determine the tank system integrity; and releasing hazardous waste and hazardous constituents in the laboratory areas and storage areas due to corroded or damaged containers;

WHEREAS, during the March 23, 1999 inspection and a later inspection by TDEC on April 22, 1999, inspectors observed staining from releases of chemicals on the asphalt located in the outside storage area. During the inspections, materials identified in this area included: antimony tribromide, ethyl alcohol, perchloromethyl mercaptan, trifluomethylene iodine filtrate, xylene, ethyl acetate, carbon tetrabromide, phosphoric acid, cyclopropane filtrate, and 1,1-diflourotetrachloroethane;

WHEREAS, During the March 23, 1999 and April 22, 1999 inspections, inspectors observed throughout the Facility that many of over 2,000 various sized containers contained rejected chemical products, decaying chemicals, and unknown chemicals that were in containers which were corroded, rusted and showed evidence of leaking. The materials in many of these containers showed evidence of phase separation and/or precipitation;

WHEREAS, Flura also operated a 20,000-gallon wastewater tank which received wastewater from all of the Facility's drains and sumps. At the time of the March 23, 1999 inspection, the tank was observed to be leaking, and the secondary containment, constructed from unsealed concrete blocks and a poured unsealed concrete floor, did not appear to be sufficiently impervious to prevent the release of wastewater into the environment;

WHEREAS, a subsequent inspection of the tank on March 25, 1999 indicated that the tank was corroded to the point where hand pressure could cause the tank walls to fatigue;

WHEREAS, during an April 22, 1999 inspection TDEC personnel observed wastewater leaking from the 20,000 gallon tank and that the wastewater was soaking into the concrete floor;

WHEREAS, on April 7, 1999, TDEC sampled the wastewater and sludge in Flura's 20,000 gallon tank. Analytical results using the Toxicity Characteristic Leaching Procedure ("TCLP") indicated the presence of 1,2-dicloroethane, arsenic, barium, cadmium, chromium, and lead. Testing of the sludge indicated the presence of cyanide, toluene, and xylene;

WHEREAS, analytical results taken from a residential well (the Freshour well) located near the Facility indicated the presence of cyanide at a level of .02 mg/l. The Freshour well is located approximately 200 to 300 feet away from Flura's 20,000 gallon wastewater tank and is used as a source of drinking water. The presence of cyanide in the well, and the karst topography of the area, indicates potential off-site migration of hazardous constituents from the Facility's tanks;

WHEREAS, On June 17, 1999, EPA issued an Administrative Order ("June 1999 AO") to Flura pursuant to Section 7003(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973(a). Among other things, the June 1999 AO required Flura to do the following: submit a current Inventory List which includes all useable materials and wastes on-site, and a Materials Management Plan on how such materials will be identified and managed in the future; conduct and submit to EPA a hazardous waste determination on each wastewater, at the point of generation, prior to being routed to the 20,000 gallon wastewater tank or the appropriate replacement tank as well as conduct and submit to EPA a hazardous waste determination of the accumulated wastes stored in the operating 8,000 gallon wastewater tank which replaced the 20,000 gallon tank and any accumulated wastes in any other container, vessel, impoundment, and/or sump; obtain and submit to EPA certifications of integrity from a professional engineer for all other tanks and secondary containment systems used on site. Finally, Flura was required to submit a written plan for sampling soil and groundwater at the Facility;

WHEREAS, the Regional Administrator of EPA Region 4 has determined pursuant to RCRA Section 7003, 42 U.S.C. § 6973, that the past or present handling, storage, treatment, transportation and/or disposal of solid wastes and/or hazardous wastes at the Flura Facility may present an imminent and substantial endangerment to health or the environment;

WHEREAS, As of March 30, 2000 EPA determined that Flura had failed to comply with a number of the requirements of the June 1999 AO. The Regional Administrator of EPA Region 4 determined that many of the conditions which gave rise to the June 1999 AO continued unabated at Flura and that pursuant to RCRA Section 7003, 42 U.S.C. § 6973, that the past or present handling, storage, treatment, transportation and/or disposal of solid wastes and/or hazardous wastes at the Flura Facility may present an imminent and substantial endangerment to health or the environment;

WHEREAS, on March 30, 2000 EPA issued an AO ("March 2000 AO") to Flura pursuant to RCRA Section 7003(a), 42 U.S.C. § 6973(a). Among other things, the March 2000 AO required Flura to cease operations at its Facility, to grant EPA and its contractors access to the Facility to take any action authorized under RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et. seq., and requiring that Flura and its employees shall not interfere in any manner with EPA's access to the Facility;

WHEREAS, Flura is a "person" as that term is defined in RCRA Section 1004(15), 42 U.S.C. § 6903(15);

WHEREAS, Dr. Edward Tyczkowski is a "person" as that term is defined in RCRA Section 1004(15), 42 U.S.C. § 6903(15);

WHEREAS, the parties, consent to entry of the following Consent Decree resolving all claims for civil penalties and injunctive relief for the

violations alleged in the United States' Complaint which is filed simultaneously herewith;

WHEREAS, the United States has reviewed the Financial Information submitted by Flura and Dr. Tyczkowski to determine whether they are financially able to pay any civil penalties associated with their past failure to comply with RCRA Orders issued in connection with the Flura Site. Based upon this Financial Information and the information submitted to the Bankruptcy Court as referenced below, the United States has determined that Flura and Dr. Tyczkowski are not able to pay a civil penalty. However, as explained below, the United States reserves the right to seek a significant penalty from Flura and/or Dr. Tyczkowski for the failure to comply with the requirements of this Consent Decree;

WHEREAS, the United States is aware that Flura has ceased operations and previous thereto, filed a petition in bankruptcy which was dismissed by the Bankruptcy Court;

WHEREAS, the United States is aware that Dr. Tyczkowski has filed a personal Chapter 7 bankruptcy petition, and whereas the United States has relied on these bankruptcy petitions, and the schedules filed therein in making the determination to enter into this Consent Decree without requiring the payment of a civil penalty, and

WHEREAS, the parties agree and the Court finds that this Consent Decree has been negotiated by the parties in good faith, that the implementation of this Consent Decree will avoid prolonged and complicated litigation, and that the Consent Decree is fair, reasonable and in the public interest.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I. DEFINITIONS

1. Unless otherwise expressly stated, the terms used in this Consent Decree that are defined in the RCRA, 42 U.S.C. § 6901, *et seq.*; or in regulations promulgated thereunder shall have the meanings set forth in such definitions.

2. Whenever the terms listed below are used in this Consent Decree or any Attachments hereto, the following definitions shall apply:

"Agencies" shall mean the EPA and TNDEC.

"Consent Decree" shall mean this Consent Decree and all attachments and exhibits hereto, and all modifications.

"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 prescribed or allowed under this Consent Decree, the provisions of Rule 6, Federal Rules of Civil Procedure, shall apply.

"Dr. Tyczkowski" shall mean Dr. Edward Tyczkowski.

"Effective Date of this Consent Decree" shall be the date it is entered by the Court.

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

"Facility" shall mean the Flura facility located at 610 Rock Hill Road, Newport, Cocke County, Tennessee, as the term is defined in 40 C.F.R. § 260.10, as of the Effective Date of this Consent Decree. See Map of Facility included at Attachment A.

"Financial Information" shall mean those financial documents requested by the United States to conduct an ability to pay analysis of Flura and Dr. Tyczkowski.

"Flura" shall mean Flura Corporation, a corporation organized under the laws of North Carolina and doing business in the State of Tennessee.

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

"Parties" shall mean the United States of America, Flura and Dr. Edward Tyczkowski.

"Plaintiff" shall mean the United States of America.

"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).

"Release" or "Release at or from the Facility" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing, of hazardous wastes or hazardous constituents into the environment at the Facility and any transport or migration of such materials from the point of original release, including any transport or migration beyond the boundaries of the Facility, unless such transport or migration is otherwise permitted by law.

"United States" shall mean the United States of America, its agencies and departments, including the United States Environmental Protection Agency.

II. JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to RCRA Section 7003(a) and 28 U.S.C. §§ 1331, 1345 and 1355. Venue is proper in this judicial district pursuant to RCRA Section 7003, 42 U.S.C. § 6973; and 28 U.S.C. §§ 1391(b) and 1395. The complaint states claims upon which the Court can grant relief.

4. Flura and Dr. Tyczkowski shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND, NOTICE OF TRANSFER AND DISCLAIMER

5. This Consent Decree shall apply to and be binding upon the United States and upon Flura and its successors, and assigns. Notice of the Consent Decree shall be given to any successors in interest prior to transfer of the Facility or its operations.

6. Each party certifies that the undersigned representatives are fully authorized by that party to enter into the terms and conditions of this Consent Decree, to execute it on behalf of that party, and to legally bind the party.

7. Unless otherwise agreed to by EPA, no change in ownership, corporate, or partnership status relating to Flura's Facility, or conveyance of title, easement, or other interest in the Facility, including but not limited to any lease or transfer of assets or real or personal property or tax lien or tax default, will alter Flura's obligation to comply with the requirements of this Consent Decree or Flura's liability for compliance by any successor or assign of Flura in the event such successor or assign fails to perform obligations required by the Consent Decree. For such period of time as this Consent Decree is in force, any deed, title, or other instrument of conveyance utilized by Flura with respect to the Facility shall contain a notice that the Facility is the subject of this Consent Decree, setting forth the case caption and index number, and the Court having jurisdiction.

8. Flura shall notify EPA prior to a change in the ownership status of any portion of the Facility, including but not limited to the conveyance of title, easement, leasehold or other interest, and prior to any change in operational status that would adversely affect the remedial measures being conducted pursuant to this Decree. This notice shall state the name, address, telephone number, and facsimile number (if any) of the grantee, and if the grantee is not a natural person, the name, address, and telephone number of

the person designated to be the grantee's contact, the nature of the conveyance, the status of the grantee as a Federal, State, private, public, or other entity, and a description of both the current and expected future activities (to the extent known by Flura) on that portion of the Facility to be conveyed, leased or otherwise alienated. Flura shall also provide a copy of this Consent Decree to the grantee prior to any such conveyance.

IV. GENERAL PROVISIONS

9. Compliance With Applicable Law: All activities undertaken by Flura and Dr. Tyczkowski pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state and local laws and regulations, or permits, including, without limitation, federal or state laws and regulations governing the generation, management, treatment, storage, transport, and disposal of hazardous waste, and the terms and conditions of any extant permit applicable to Flura's Facility.

V. OBJECTIVES

10. The purposes of the United States, Flura and Dr. Tyczkowski in entering into this Consent Decree are:

a) to assure that Flura and Dr. Tyczkowski comply with applicable requirements of RCRA, all corresponding state laws, and all applicable implementing regulations under the foregoing statutes; and

b) to protect, in accordance with applicable law, human health and the environment from risks arising from any releases or threatened releases of hazardous waste and/or hazardous constituents at or from Flura's Facility.

VI. COMPLIANCE WITH REGULATORY REQUIREMENTS

11. RCRA: Upon entry of this Consent Decree, Flura and Dr. Tyczkowski shall continue to comply with the March 2000 AO as well as all applicable

federal provisions of RCRA and regulations promulgated thereunder and the provisions of this Consent Decree.

12. Any materials which, if discarded, would constitute "hazardous waste" as that term is defined in RCRA and its implementing regulations, removed at any time from the Flura Facility and in the possession or control of Dr. Tyczkowski shall be identified in writing to EPA in compliance with paragraph 16 of this Decree, within 7 days of the entry of this Consent Decree, and returned to the Site or made available for EPA removal, as instructed by EPA.

13. Dr. Tyczkowski shall not engage, participate, take part in, or oversee the formulation of chemicals unless there is a qualified engineer with at least 5 years of RCRA compliance experience responsible for the handling and storage of all materials used in the formulation process, and such person has not been the subject of a state or federal RCRA enforcement action. Under no circumstances shall Dr. Tyczkowski be employed, volunteer, or otherwise be engaged in a position where he is responsible for compliance with RCRA.

14. Dr. Tyczkowski shall not personally, nor shall any entity controlled by him, possess, store, and/or accumulate materials which if discarded would constitute a "hazardous waste" except for materials commercially available for common household usage, and in quantities appropriate for common household usage.

VII. AGENCY REVIEW AND APPROVAL OF DOCUMENT SUBMITTALS

15. As provided for in this Consent Decree, EPA shall review all reports, and other documents submitted for review and, if required, approval pursuant to this Consent Decree. If approval is required, EPA shall notify Flura and Dr. Tyczkowski jointly in writing of its approval, disapproval or modification of such reports or other documents, or any part thereof.

16. Documents, including reports and other correspondence to be submitted pursuant to this Consent Decree, shall be sent to the following addresses, or any other address that Flura, Dr. Tyczkowski, or EPA hereafter agree upon in writing:

A) Three (3) copies of all documents to be submitted to EPA should be sent to:

U.S. Environmental Protection Agency - Region 4
Attn: Flura Project Coordinator
61 Forsyth Street
Atlanta, GA 30303

17. All documents submitted by Flura to EPA for review and approval or modification pursuant to this Consent Decree shall be signed by a responsible agent of the Facility as defined in 40 C.F.R. § 270.11(a)(1), or its duly authorized representative, including documents submitted by Dr. Tyczkowski, and shall include the following certification statement:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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.

VIII. ACCESS

18. Flura agrees to provide the Agencies and their representatives, including contractors, access at all reasonable times, to enter and move about all property at the Facility, with due regard for safety of personnel and property, for any purpose relating to the implementation, monitoring or enforcement of this Consent Decree and the March 2000 AO.

19. Nothing in this Section limits or otherwise affect the Agencies' rights of access and entry pursuant to any applicable law.

IX. STIPULATED PENALTIES

20. Except as set forth in Paragraph 31 below, Flura and/or Dr. Tyczkowski shall be liable for stipulated penalties as set forth herein to the United States for their respective failure to comply with stated requirements of this Consent Decree, unless excused under Section XII (Force Majeure). "Compliance" by Flura shall include completion of the activities under this Consent Decree or the March 2000 AO. The payment of stipulated penalties shall not alter in any way Flura's and/or Dr. Tyczkowski's respective obligations to complete performance required under this Consent Decree.

21. For noncompliance with any of the requirements of this Consent Decree, the following stipulated penalties shall accrue per violation per day:

Period of Noncompliance

Days	Days	Over
1-30	31-60	60 days
$750	$5,000	$10,000

22. 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 correction of noncompliance, except as provided in Paragraph 31 below. Nothing herein shall prevent the simultaneous accrual penalties for separate violations of this Consent Decree. Plaintiff's failure to enforce stipulated penalties in any particular instance shall not effect an estoppel or waiver of any kind. Flura and/or Dr. Tyczkowski shall pay all penalties accruing against them under this Section to the United States within thirty (30) days from the receipt of a written notice from EPA notifying Flura

and/or Dr. Tyczkowski that penalties have been assessed, unless Flura and/or Dr. Tyczkowski invoke the Dispute Resolution procedures under Section X.

23. All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to the "Treasurer of the United States," shall be mailed to the United States Attorney's Office for the Eastern District of Tennessee, Financial Litigation Unit, 800 Market Street, Suite 211, Knoxville, TN 37902, and shall indicate that the payment is for stipulated penalties, shall state the basis for the payment of stipulated penalties, and shall reference DOJ File No. 90-7-1-06889, and the name and address of the person or entity submitting the payment. Copies of the transmittal letter and check(s) shall be sent to EPA and the Department of Justice pursuant to Section VII, Paragraph 16 above.

X. DISPUTE RESOLUTION

24. Unless otherwise expressly provided for in this Consent Decree, Flura and/or Dr. Tyczkowski shall have the right to dispute any decision of EPA under this Consent Decree, and the provisions of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the provisions in this Section shall not apply to actions by the United States to enforce obligations of Flura and/or Dr. Tyczkowski under the March 2000 AO, or obligations of Flura and/or Dr. Tyczkowski that have not been disputed in accordance with this Section.

25. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) 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 a written Notice of Dispute to the other party.

26. In the event that the parties cannot resolve a dispute by informal negotiations, the parties may agree to proceed with mediation before a mediator mutually agreed upon by the parties. Except as provided in Paragraph 34 below (Force Majeure), the mediation shall not cause delays with any requirement of this Consent Decree. Mediation shall be deemed to conclude when any party or the mediator delivers a notice that mediation is terminated.

27. In the event that the parties cannot resolve a dispute by informal negotiations or mediation under the preceding Paragraphs, then the position advanced by EPA shall be considered binding unless, within twenty (20) days after the conclusion of the informal negotiation period or mediation if it has been agreed upon by the parties, whichever is later, Flura and/or Dr. Tyczkowski 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, any supporting documentation relied upon by Flura and/or Dr. Tyczkowski, and any actions which Flura and/or Dr. Tyczkowski consider necessary to resolve the dispute.

28. An administrative record of the dispute shall be maintained by EPA. The administrative record shall include the Statement of Position and all of the information provided by Flura and/or Dr. Tyczkowski pursuant to the preceding Paragraph, a Statement of Position and information considered or relied upon by EPA, as well as any other documents relied upon by EPA in making the final decision pursuant to the next Paragraph.

29. If EPA concurs with the position of Flura and/or Dr. Tyczkowski, they shall provide written notice to Flura and/or Dr. Tyczkowski. If EPA does not concur with the position of Flura and/or Dr. Tyczkowski, EPA shall so notify Flura and/or Dr. Tyczkowski in writing setting forth the basis of its decision. EPA's decision shall control unless, within fifteen (15) days of

receipt of the written determination, Flura and/or Dr. Tyczkowski files a notice of judicial review in the United States District Court for the Eastern District of Tennessee, which shall set forth 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. EPA shall file a response to the notice of judicial review.

30. In any such judicial review, Flura and/or Dr. Tyczkowski shall have the burden of proving on the administrative record that EPA's position is arbitrary and capricious or contrary to law or the provisions of this Consent Decree.

31. The invocation of formal dispute resolution procedures under this Section shall not of itself extend or postpone any obligation of Flura and/or Dr. Tyczkowski under this Consent Decree, but the payment of stipulated penalties with respect to the disputed matter shall be stayed pending resolution of the dispute. During the formal administrative dispute resolution process described in Paragraphs 27-29 above, stipulated penalties shall continue to accrue for sixty (60) days after the Agencies receive Flura's and/or Dr. Tyczkowski's Statement of Position, and for sixty (60) days after any supplementation of the administrative record by Flura and/or Dr. Tyczkowski in accordance with Paragraph 27 above. After EPA issues a written determination in accordance with Paragraph 29 above, stipulated penalties shall accrue until resolution of any judicial review. Stipulated penalties shall be paid within fifteen (15) days after written demand by EPA following resolution of the dispute by EPA or the Court. To the extent that Flura and/or Dr. Tyczkowski prevails on the disputed issue, stipulated penalties shall be excused.

XI. INDEMNIFICATION

32. The United States does not assume any liability by entering into this Consent Decree. Flura agrees to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, employees, contractors, subcontractors and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Flura, its officers, directors, employees, contractors, subcontractors, receivers, trustees, agents, or assignees, and any other person acting on its behalf or under its control in carrying out the activities pursuant to this Consent Decree. Further, Flura agrees to pay the United States all costs it incurs including, but not limited to, reasonable attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Flura, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Flura in carrying out activities pursuant to this Consent Decree. Neither Flura nor any such contractor shall be considered an agent of the United States.

33. Flura and Dr. Tyczkowski 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 Flura and any person for performance of Work on or relating to the Facility, including, but not limited to, claims on account of construction delays.

XII. FORCE MAJEURE

34. Flura shall perform the requirements of this Consent Decree in the manner and within the time limits set forth herein, unless the performance is

prevented or delayed by events which constitute a force majeure. No stipulated penalties shall accrue for any time period during which performance is excused or delayed as a result of a force majeure event. Flura's obligation to comply with one or more of the provisions of this Consent Decree shall be deferred to the extent and for the duration that the delay is caused by a force majeure event. A force majeure is defined as any event caused by circumstances entirely beyond the control of Flura or any entity subject to control by Flura, including a contractor or consultant, which delays or prevents performance of any work or other action undertaken to fulfill any obligation of Flura under this Consent Decree, despite the best efforts under the circumstances of Flura, its contractors, or consultants to perform such work or other action in a timely manner. The requirement that Flura exercise "best efforts" includes using best efforts under the circumstances to anticipate any potential force majeure event and best efforts under the circumstances to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the extent reasonably possible under the circumstances. "Force Majeure" shall not apply to any delay due to increased costs or Flura's financial inability to carry out the provisions of this Consent Decree, to normal precipitation events, or to Flura's failure to make timely and bona fide applications and to exercise diligent efforts to obtain permits.

35. When circumstances are occurring or have occurred that can reasonably be anticipated to cause a delay in achieving any requirement set forth in this Consent Decree, or in any plan developed hereunder within the time allowed, Flura shall notify EPA promptly in writing by facsimile/telecopier, and in no event later than 72 hours after Flura knew or reasonably should have known of the occurrence of such circumstances. Such

notice shall include an estimate of the anticipated length of delay, including necessary demobilization and remobilization, its cause, measures taken or to be taken to minimize the delay, an estimated time table for implementation of such measures, a statement as to whether Flura is claiming a "force majeure" and the bases for such a claim. Flura shall adopt all reasonable measures to avoid or minimize any such delay. Failure to comply with the notice provision of this section shall constitute a waiver of Flura's right to assert force majeure. Notification of any delay, in and of itself, shall not extend the time allowed for meeting any requirement or excuse the delay or payment of stipulated penalties.

36. If EPA agrees that the delay was attributable to a force majeure event, it will extend the time for performance of that requirement by a period not greater than the delay resulting from such circumstances, unless the parties agree that a different time period is acceptable. Such an extension does not alter the schedule for performance or completion of other tasks required under this Consent Decree, except that EPA shall extend the time for performance of other tasks under this Consent Decree that EPA agrees will also necessarily be delayed as a result of the force majeure event.

37. In the event that EPA and Flura cannot agree as to whether a delay was caused by a force majeure event, or as to the length of the appropriate extension of time, the dispute shall be resolved in accordance with the dispute resolution procedures set forth in Section X. In any such dispute resolution proceeding, EPA shall have the burden of demonstrating that the event was a "force majeure" event, that the duration of the delay caused by such event is or was reasonable under the circumstances, and that, as a result of the delay, a particular extension period is appropriate. If Flura carries this burden, the delay at issue shall be deemed not to be a violation by Flura of the affected obligation of this Consent Decree.

XIII. PRECLUSION OF CLAIMS

38. Flura and Dr. Tyczkowski agree not to make any claims pursuant to Sections 106(b), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, or 9613 or any other provision of law, directly or indirectly against the Hazardous Substance Trust Fund established by CERCLA in complying with this Consent Decree. Nothing in this Consent Decree shall be deemed to constitute pre-authorization of a CERCLA claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 700(d).

39. Flura and Dr. Tyczkowski agree not to make any claims against the United States, including any department, agency, or instrumentality of the United States under CERCLA Sections 107 or 133 related to the Site.

40. Flura and Dr. Tyczkowski agree not to assert any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

XIV. RETENTION OF RIGHTS

41. Except as otherwise provided in this Consent Decree, EPA retains all authorities and reserves all rights to take any and all actions authorized by law to protect human health and the environment, and the entry of this Consent Decree and Flura's and Dr. Tyczkowski's consent to comply shall not limit or constitute a waiver, or otherwise preclude any power, authority, right, or remedy, either legal or equitable of the United States.

42. Except as otherwise provided in this Consent Decree, EPA hereby reserves all powers, authorities, rights, and remedies, both legal and equitable, to enforce Flura's and Dr. Tyczkowski's obligations to comply with any of the requirements of this Consent Decree.

43. Except as otherwise provided in this Consent Decree, this Consent Decree and compliance by Flura and Dr. Tyczkowski with the terms of this

Consent Decree shall not relieve Flura and Dr. Tyczkowski of their obligations to comply with RCRA or any other applicable local, state or federal laws, regulations and permits.

44. The Agencies reserve authority to take any action authorized by law if there may be an imminent and substantial endangerment in connection with the release of hazardous waste or hazardous constituents at or from the Facility, not otherwise addressed by this Consent Decree or the March 2000 AO.

45. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Flura and Dr. Tyczkowski with respect to:

a. claims under Sections 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9604, 9606 and 9607;

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

c. criminal liability.

46. This Consent Decree does not limit or affect the rights of Flura, Dr. Tyczkowski, or the United States with respect to any third parties. Nothing in this Consent Decree is intended either to create any rights in or grant any cause of action to any person not a party to this Consent Decree, or to release or waive any claim, cause of action, demand, or defense in law or equity that any party to this Consent Decree may have against any person(s) or entity not a party to this Consent Decree.

XV. COVENANT OF PLAINTIFF

47. In consideration of the Work that will be performed and the penalties that will be paid by Flura and Dr. Tyczkowski under the terms of this Consent Decree, EPA covenants not to sue or to take administrative action against Flura and Dr. Tyczkowski for claims specifically alleged in the

Complaint of the United States. This covenant not to sue is expressly conditioned upon the complete and satisfactory performance by Flura and Dr. Tyczkowski of their respective obligations under this Consent Decree, including the Attachments hereto, and the March 2000 AO, and may be voided at any time prior to completion of the work if Flura and/or Dr. Tyczkowski fail to comply with any of the requirements of this Consent Decree. This covenant not to sue extends only to Flura and Dr. Tyczkowski, and does not extend to any other person.

XVI. MODIFICATION

48. Except as specifically provided for herein, there shall be no modifications or amendments of this Consent Decree without written agreement of the parties to this Consent Decree and approval by this Court.

XVII. RETENTION OF JURISDICTION

49. This Court retains jurisdiction over both the subject matter of this Consent Decree and Flura and Dr. Tyczkowski for the duration of the performance of the terms and provisions of this Consent Decree, including its Attachments, 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 X ("Dispute Resolution") hereof.

50. The parties retain the right to seek to enforce the terms of this Consent Decree and take any action authorized by Federal or State law not inconsistent with the terms of this Consent Decree to achieve or maintain compliance with the terms and conditions of this Consent Decree or otherwise.

XVIII. COSTS

51. Each party to this action shall bear its own costs and attorneys' fees in the actions resolved by this Consent Decree.

XIX. PUBLIC NOTICE AND COMMENT

52. 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 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. Flura and Dr. Tyczkowski consent to the entry of this Consent Decree without further notice.

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

XX. TERMINATION

54. After EPA has determined that Flura and Dr. Tyczkowski have completed all actions required by and met all objectives of this Consent Decree, and that it is appropriate to terminate this Consent Decree, EPA shall provide written notice to Flura and Dr. Tyczkowski. Such notice shall not, however, terminate Flura's and/or Dr. Tyczkowski's obligations to comply with any continuing obligations hereunder, including, but not limited to, Section VI, Section XIII, and Section XIV. Subsequent to EPA's written notification, EPA will notify the Court that Flura and Dr. Tyczkowski have demonstrated that all actions required to be taken by Flura and Dr. Tyczkowski pursuant to this Consent Decree have been completed and that the objectives have been achieved for all environmental media. Thereafter, a motion to terminate this Consent

Decree will be filed, and the Court may order such termination after conducting such inquiry as it deems appropriate.

55. This Consent Decree shall terminate upon entry of an order of the Court.

IT IS HEREBY ORDERED that the foregoing Consent Decree be entered as an Order of this Court.

Date:

_____
The Honorable
United States District Judge

FOR PLAINTIFF
UNITED STATES OF AMERICA:

Dated:

W. BENJAMIN FISHEROW
Deputy Chief,
Environmental Enforcement Section
Environment and Natural Resources
Division
United States Department of Justice

Dated: 6/15/04

KARL J. FINGERHOOD
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

Dated:

HARRY S. MATTICE, JR.
United States Attorney
Eastern District of Tennessee

PAMELA STEELE
Assistant U.S. Attorney
800 Market Street, Suite 211
Knoxville, TN 37902

FOR PLAINTIFF
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Dated:

J. I. PALMER, JR.
Regional Administrator
U.S. Environmental Protection
Agency, Region 4

Dated:

REUBEN BUSSEY
Associate Regional Counsel
U.S. Environmental Protection
Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Ga 30303

FOR FLURA CORPORATION

Dated: 11/12/03

Flura Corporation
FLURA CORPORATION

By: EDWARD A. TYCZKOWSKI
(Name)

PRES.
(Title)

(Address)
DURHAM NC 27713

FOR DR. EDWARD TYCZKOWSKI

Dated:

DR. EDWARD TYCZKOWSKI

(Address)

DURHAM NC 27713

(Telephone)