IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

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UNITED STATES OF AMERICA and the STATE OF ILLINOIS, Plaintiffs,	)	CIVIL ACTION NO.
v.	)	04C 5172
City of Waukegan, Elgin, Joliet & Eastern Railway Company, General Motors Corporation, Larsen Marine Service, Inc. and the North Shore Gas Company, Defendants.	)	JUDGE HART
		MAGISTRATE SIDNEY I. SCHENKIER

REMEDIAL ACTION CONSENT DECREE

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Plaintiffs,	)	CIVIL ACTION NO.
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Defendants.	)	

REMEDIAL ACTION 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"), and the State of Illinois, on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607, and Section 22.2(f) of the Illinois Environmental Protection Act, 415 ILCS 5/22.2 (2002).

B. The United States and the State in their complaint seek, inter alia: (1) reimbursement of costs incurred by EPA, the State and the Department of Justice for response actions at the Waukegan Manufactured Gas and Coke Plant Site ("WMG & CP Site"), Operable Unit 2 of the Outboard Marine Corporation Superfund Site, in Waukegan, Illinois ("the OMC Superfund Site"), together with accrued interest; and (2) performance of studies and response work by the Defendants at

the WMG & CP Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Illinois (the "State") on May 8, 2003 of negotiations with potentially responsible parties regarding the implementation of the remedial action for the WMG & CP 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), on May 8, 2003, EPA notified the Illinois Department of Natural Resources, the Illinois Environmental Protection Agency and the United States Department of the Interior, which is a federal natural resources trustee, 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 trustees 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 Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the WMG & CP Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the OMC Superfund Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983 (48 Fed. Reg. 40658). The WMG & CP Site

is an operable unit of the OMC Superfund Site, located in the City of Waukegan, Illinois.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the WMG & CP Site, in September 1990, North Shore Gas Company entered into an Administrative Order on Consent for completion of a Remedial Investigation and Feasibility Study ("RI/FS") for the WMG & CP Site pursuant to 40 C.F.R. § 300.430.

H. North Shore Gas Company and General Motors Corporation completed a Remedial Investigation ("RI") Report in 1995 and a Feasibility Study ("FS") Report in November 1998. Pursuant to the letter dated November 7, 2000 from the EPA to North Shore Gas Company, EPA acknowledged that certain of EPA's Past Response Costs incurred for supervision of the RI/FS were paid by North Shore Gas Company and General Motors Corporation to EPA.

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 February 22, 1999 in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan. The EPA held a public meeting on March 3, 1999 at the Waukegan Public Library, Waukegan, Illinois. 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 WMG & CP Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 1999, on which the State has given its concurrence. The ROD includes EPA's documentation of significant changes 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 December 8, 2000 and on July 2, 2001, EPA entered into Administrative Orders on Consent for Pre-Remedial Design Pilot Study and Remedial Design, respectively, (collectively, "AOCs") with Outboard Marine Corporation ("OMC") (which was, at these times, the owner of the WMG & CP Site) and the Elgin, Joliet & Eastern Railway Company ("EJ&E"), General Motors Corporation, and North Shore Gas Company. The AOCs included a Final Work Plan for Remedial Design and a Quality Assurance Program Plan ("QAPP"), Attachments II and IV, respectively, to the July 2, 2001 AOC. The Respondents have completed all work on the December 8, 2000 AOC and that AOC is effectively terminated. The July 2, 2001 AOC, including the Final Work Plan for Remedial Design and the QAPP, is incorporated into this Consent Decree as Appendix A and the terms and conditions of that AOC are superseded by the terms and conditions of this Consent Decree.

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

M. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the 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 WMG & CP 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), and supplemental jurisdiction for state and local claims pursuant to 28 U.S.C. § 1367. This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

3. Each Performing and Owner Settling Defendant shall provide a copy of this Consent Decree to each contractor hired by that Settling Defendant(s) to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the WMG & CP Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent

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

IV. DEFINITIONS

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

"Act" shall mean the Illinois Environmental Protection Act, as amended, 415 ILCS 5/1 et seq.

"Buyout Settling Defendant" shall mean the Elgin, Joliet & Eastern Railway Company.

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

"City" shall mean the City of Waukegan.

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

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday,

Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

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

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

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA and the Illinois EPA incur 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 or the State pursuant to Section VII (Remedy Review), IX (Access, Land Use, and Institutional Controls), XV (Emergency Response), and Paragraph 86 of Section XXI (Work Takeover), or the costs incurred by the United States or the State in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (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 and the State of Illinois incur in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel

costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (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), XV, and Paragraph 86 of Section XXI. Future Response Costs shall also include all Future Oversight Costs, and all Interest on the Interim Response Costs that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from September 30, 2002 to the date of entry of this Consent Decree.

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

"Groundwater Pilot Study" shall mean the work performed pursuant to the Administrative Order on Consent, No. V-W-01-C-626, dated December 8, 2000.

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

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

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States and the State of Illinois in connection with the WMG & CP Site between September 30, 2002 and the Effective Date of this Consent Decree, or (b) incurred after September 30, 2002, but prior to the Effective Date of this

Consent Decree.

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

"Matters Addressed" in this Consent Decree shall mean all response actions taken and all response costs incurred by the United States and the State of Illinois, or any other person, with respect to the OMC Site, including compliance with the access, cooperation, notice and institutional controls required by Paragraphs 9 and 25 (Section IX, Access, Land Use and Institutional Controls) of this Consent Decree. The "Matters Addressed" in this Consent Decree do not include those response costs or those response actions as to which the United States and the State of Illinois have reserved their rights under this Consent Decree(except for claims for failure to comply with this Decree), in the event that the United States or the State of Illinois assert rights against the Settling Defendants coming within the scope of such reservations.

"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.

"Outboard Marine Corporation Site" or "OMC Site" shall mean the properties owned or operated by the Outboard Marine Corporation, or adjacent properties affected by the Outboard Marine Corporation operations, on Seahorse Drive in Waukegan, Illinois, as generally depicted on the map attached hereto as Appendix C, portions of which

have been designated as the Outboard Marine Corporation Superfund Site, as listed at 47 *Fed. Reg.* No. 251, 58476 (Dec. 30, 1982).

"Owner Settling Defendants" shall mean City of Waukegan and Larsen Marine Service, Inc.

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

"Parties" shall mean the United States, the State of Illinois, and Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States and the State paid at or in connection with the WMG & CP Site through September 30, 2002, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section VII of the ROD and Section II of the SOW and any EPA-approved Soil or Groundwater Remedial Action Work Plan, including any Performance Standards derived from the Technical Memorandum for redevelopment of the WMG & CP Site.

"Performing Settling Defendants" shall mean General Motors Corporation and North Shore Gas Company.

"Plaintiffs" shall mean the United States and the State of Illinois.

"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 WMG & CP Site (Operable Unit #2 of the Outboard Marine Corporation Superfund Site), signed on September 30,

1999, by the Regional Administrator, EPA Region 5, or his delegate, and all attachments thereto. The ROD is Attachment I to the July 2, 2001 AOC, Appendix A hereto.

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

"Remedial Action Work Plan" shall mean the documents developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto, including the Technical Memorandum.

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

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

"Settling Defendants" shall mean the City of Waukegan, Elgin, Joliet & Eastern Railway Company, General Motors Corporation, Larsen Marine Service, Inc. and North Shore Gas Company.

"Soil Management Plan" or "SMP" shall mean the plan set forth in Appendix F that defines how future land use activities that may affect soils on the WMG & CP Site must be conducted to maintain the effectiveness of the RA. The SMP may be modified by approval of EPA, after reasonable opportunity for review and comment by the State, to provide for modified land use activities.

"Soil Remedial Action" or "Soil RA" shall mean those activities to be undertaken by the Performing Settling Defendants to implement the ROD in accordance with the SOW and any Vadose Zone Soil Remedial

Design or the Soil Remedial Action Work Plans approved by EPA and other plans approved by EPA. Soil RA does not include Soil O&M or any actions taken to redevelop the WMG & CP Site pursuant to and consistent with the ROD, the Technical Memorandum, any ESD(s) issued by EPA, and the SMP.

"Soil Operation and Maintenance" or "Soil O&M" shall mean those activities (other than the Soil RA as defined herein) required by this Consent Decree and as defined in the ROD and SOW, the SMP and any plans approved by EPA to be undertaken by the City to implement and to maintain the effectiveness of the soil remedial actions.

"Soil O&M Escrow Account" shall mean that trust fund funded in the amount of $756,761, pursuant to the Soil O&M Trust Agreement attached as Appendix J, by the Performing Settling Defendants to cover the costs of Soil O&M consistent with the Remedial Action and this Consent Decree.

"Soil O&M Trust Agreement" shall mean that Trust Agreement funded by the Performing Settling Defendants that establishes the Soil O&M Escrow Account to pay the estimated costs of the Soil O&M based upon the 1999 ROD for Soil O&M that will be performed by the City, or if the City fails to perform Soil O&M, the EPA.

"State" shall mean the State of Illinois.

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

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

"Technical Memorandum" shall mean the memorandum dated December 5, 2003, regarding "Revised Soil Cleanup Levels" prepared by Barr Engineering Company and attached hereto as Appendix I.

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

"WMG & CP Site" shall mean Operable Unit 2 of the Outboard Marine Corporation Superfund Site, and otherwise known as the Waukegan Manufactured Gas and Coke Plant Site, encompassing approximately 36 acres, located on a peninsula separating Waukegan Harbor on the west and Lake Michigan on the east, in Waukegan, Lake County, Illinois, and depicted generally on the map attached as Appendix C.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) and Section 3.14 of the Act, 415 ILCS 5/3.14; (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, including Operation and Maintenance, and access, land use, and institutional controls, as defined in Section IX. Work shall not include the requirements of Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the WMG & CP Site by the design and implementation of response actions at the WMG & CP Site by the Settling Defendants, to reimburse response costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Settling Defendants as provided in this Consent Decree and to afford the Settling Defendants protection from contribution actions or claims as provided by CERCLA

and this Consent Decree.

6. Commitments by Settling Defendants

a. General Motors Corporation and North Shore Gas Company shall be obligated solely to finance and perform the Soil RA and Groundwater RA and the Groundwater O&M portion of the Work and to establish and fund a Soil O&M Escrow Account in the amount of $756,761. Except as provided in Paragraph 19, General Motors Corporation and North Shore Gas Company shall have no obligations whatsoever for the performance or additional funding of soil remedial work required to allow redevelopment or reuse of the WMG & CP Site beyond the Soil RA portion of the Work required by the Soil RA Work Plan, including, but not limited to, no obligation for the payment of stipulated penalties related to the Soil O&M. Except as provided in Paragraph 19, the City shall be obligated solely to perform the Soil O&M portion of the Work and to finance such portion of the Soil O&M in excess of the amount provided in the Soil O&M Escrow Account. The City shall have no obligations whatsoever to finance or perform the Soil RA and Groundwater RA and Groundwater O&M portions of the Work and any associated obligations under this Consent Decree, including, but not limited to, the payment of stipulated penalties related to the Soil RA and Groundwater RA or Groundwater O&M. The Buyout Settling Defendant shall be obligated solely to comply with the Terms of the Settlement Agreement between General Motors Corporation, North Shore Gas Company and the Buyout Settling Defendant and to make payments into the WMG & CP Site Trust Fund as required by the terms of that Settlement Agreement. The Buyout Settling Defendant shall have no other obligations except as otherwise provided in this Consent Decree.

b. The Performing Settling Defendants shall finance and perform the Remedial Action and O&M portions of the Work, including

all other requirements of the Performing Settling Defendants identified elsewhere in this Consent Decree, in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to or incorporated into this Consent Decree. Performing Settling Defendants shall also reimburse the United States and the State for Interim Response Costs and Future Response Costs relating to Soil and Groundwater RA and Groundwater O&M as provided in this Consent Decree. The City shall reimburse the United States and the State for all Future Response Costs related to Soil O&M.

c. The obligations of General Motors Corporation and North Shore Gas Company to finance and perform the Remedial Action and Groundwater O&M portions of the Work, to pay amounts owed the United States and the State under this Consent Decree associated with such Work, and to fund the Soil O&M Escrow Account are joint and several. In the event of the insolvency or other failure of either General Motors Corporation or North Shore Gas Company to implement the requirements of this Consent Decree associated with the Remedial Action and Groundwater O&M portions of the Work and to fund the Soil O&M Escrow Account, the other shall complete all such requirements. The City shall perform the Soil O&M portion of the Work and finance such portion of the Work in excess of $756,761, and shall pay amounts owed the United States and the State under this Consent Decree associated with such portion of the Work. The City may fund Soil O&M costs from the Soil O&M Escrow Account as long as the City is in compliance with its obligations pursuant to this Consent Decree.

d. Owner Settling Defendants shall provide access, cooperation, notice, and institutional controls in accordance with

Paragraphs 9 and 25 (Section IX, Access, Land Use and Institutional Controls) of this Consent Decree.

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

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 the WMG & CP Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on the WMG & CP Site requires a federal or state permit or approval, Performing Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

9. Notice to Successors-in-Title

a. With respect to any property owned or controlled by the Owner Settling Defendants that is located within the WMG & CP Site, within 15 days after the entry of this Consent Decree, the Owner Settling Defendants shall submit to EPA for review and approval, after reasonable opportunity for review and comment by the State, a Notice of Land Use Restrictions and Institutional Controls, in substantially the form set forth in Appendix D to this Consent Decree, which shall provide notice to all successors-in-title that the property is part of the WMG & CP Site, that EPA selected a remedy for the WMG & CP Site on September 30, 1999, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such Notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendants shall record the Notice(s) in the Office of the Recorder of Deeds in Lake County, Illinois within 10 days of EPA's approval of the Notice(s). The Owner Settling Defendants shall provide EPA with a certified copy of the recorded Notice(s) within 15 days of recording such Notice(s).

b. At least 45 days prior to the conveyance of any interest in property located within the WMG & CP Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant conveying the interest shall give the grantee, lessee or mortgagee as applicable written notice of (i) this Consent Decree, (ii) the Declaration of Environmental Easement and Restrictive Covenants, as defined in Paragraph 25(c) of this Consent Decree, and (iii) the Owners' Association CCR, as defined in Paragraph 25(c) of this Consent Decree.

c. In the event of any such conveyance, the conveying 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 IX (Access, Land Use, and Institutional Controls) of this Consent Decree, shall continue to be met by such conveying Owner Settling Defendants. In no event shall the conveyance release or otherwise affect the obligation of the conveying Owner Settling Defendant to comply with all provisions of this Consent Decree, unless EPA approves in writing, after a reasonable opportunity for review and comment by Illinois EPA, to release the conveying Owner Settling Defendant from its obligation under this Consent Decree. If the United States approves of such release, after a reasonable opportunity for review and comment by Illinois EPA, the grantee, lessee or mortgagee may perform some or all of the conveying Owner Settling Defendant's obligations under this Consent Decree.

VI. PERFORMANCE OF ALL WORK REQUIRED UNDER THIS CONSENT DECREE BY THE SETTLING DEFENDANTS

10. Selection of Supervising Contractor

a. All aspects of the Work to be performed by Performing Settling Defendants pursuant to Sections VI (Performance of all Work required by this Consent Decree by the Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by Illinois EPA. General Motors Corporation and North Shore Gas Company have selected

Conestoga Rovers and Associates as their Supervising Contractor for the Remedial Action and the Groundwater O&M portions of the Work and EPA has approved of that selection. The City shall notify EPA and Illinois EPA in writing within 60 days of entry of this Consent Decree of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor for the Soil O&M portion of the work, which proposal may designate the City or another unit of government as Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Performing Settling Defendants or the City propose to change the Supervising Contractor, Performing Settling Defendants or the City shall give such notice to EPA and Illinois EPA and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by Illinois EPA, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Performing Settling Defendants or the City in writing. Performing Settling Defendants or the City shall submit to EPA and Illinois EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Performing Settling Defendants or the City may select any contractor from that list that is not disapproved and shall notify EPA and Illinois EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph

and this failure prevents Performing Settling Defendants or the City from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Performing Settling Defendants or the City may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Actions

a. Performing Settling Defendants shall submit to EPA and Illinois EPA, a work plan for the performance of the Groundwater Remedial Action at the WMG & CP Site ("Groundwater Remedial Action Work Plan") concurrent with the pre-final design submittal or within 14 days of lodging of this Consent Decree, whichever is later. Performing Settling Defendants shall submit to EPA and Illinois EPA a Soil Remedial Action Work Plan ("Soil RA Work Plan") within 14 days of lodging of this Consent Decree. The Remedial Action Work Plans shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards. Upon approval by EPA, after a reasonable opportunity for review and comment by Illinois EPA, the Remedial Action Work Plans shall be incorporated into and become enforceable under this Consent Decree. Unless already submitted for review and approval as part of the Remedial Design, at the same time as they submit each Remedial Action Work Plan, Settling Defendants shall submit to EPA and Illinois EPA a Health and Safety Plan for field activities required by that Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plans shall include the following: (1) separate schedules for completion of the Soil and Groundwater Remedial Actions; (2) method for selection of the

contractors; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plans; (5) a groundwater monitoring plan as part of the Groundwater Remedial Action Work Plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plans; (8) methodology for implementation of the Contingency Plans, if required; (9) tentative formulation of the Remedial Action team(s); (10) construction quality control plans (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plans also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of Performing Settling Defendants Remedial Action Project Team(s) (including, but not limited to, the Supervising Contractor).

c. The City shall submit to EPA and IEPA within 60 days of lodging of the Consent Decree a work plan for the Soil O&M ("Soil O&M Work Plan") which will describe the maintenance of the soil cover as implemented by the Soil RA. If the property is to be redeveloped, the City shall submit to EPA and IEPA an amended Soil O&M Work Plan which will describe the placement and maintenance of controls required for a modified cover. The Soil O&M Work Plan, including any amended Soil O&M Work Plan, shall contain the information listed in Paragraph 11.b, as appropriate. Upon approval by EPA, after a reasonable opportunity for review and comment by Illinois EPA, the Soil O&M Work Plan, including any amended Soil O&M Work Plan, shall be incorporated into and become enforceable under this Consent Decree. Unless already submitted for review and approval as part of the Remedial Design, at

the same time as it submits the Soil O&M Work Plan, the City shall submit to EPA and Illinois EPA a Health and Safety Plan for field activities required by the Soil O&M Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

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

e. Upon approval of the Soil O&M Work Plan by the EPA, after a reasonable opportunity for review and comment by Illinois EPA, the City shall implement the activities required under the Soil O&M Work Plan. The City shall submit to EPA and Illinois EPA all plans, submittals or other deliverables required under the approved Soil O&M Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, the City shall not commence physical Soil O&M activities prior to the approval of the Soil O&M Work Plan.

12. The Performing Settling Defendants shall continue to implement the Remedial Action and Groundwater O&M until the

Groundwater Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree. The City shall continue to implement the Soil O&M until EPA, after reasonable review and comment by Illinois EPA, determines that further Soil O&M is not required to maintain the effectiveness of Soil Remedial Action.

13. Modification of the SOW or Related Work Plans

a. If EPA determines, with a reasonable opportunity for review and comment by Illinois EPA, that modification to the work specified in the work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD.

b. For the purposes of this Paragraph 13 and Paragraphs 49 and 50 only, the "scope of the remedy selected in the ROD" is Remedial Alternative 3, as modified in the ROD and fully set forth in Section X (The Selected Remedy) of the ROD.

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 XIX (Dispute Resolution), Paragraph 67 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute. The Parties recognize that the Technical Memorandum is consistent with the scope of the remedy selected in the ROD.

d. General Motors Corporation and North Shore Gas Company shall implement any work required by any modifications incorporated in

the SOW and/or in work plans developed pursuant to the SOW related to Soil RA, Groundwater RA, and Groundwater O&M. The City shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW related to Soil O&M 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.

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

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

a. Performing Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Performing Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a

decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Performing Settling Defendants following the award of the contract for Remedial Action construction. Performing Settling Defendants shall provide the information required by Paragraph 15.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

16. Periodic Review. The City shall conduct any studies and investigations related to the Soil RA and Soil O&M as requested by EPA, in order to permit EPA to conduct reviews of whether the Soil Remedial Action as defined in the ROD and this Consent Decree is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations. General Motors Corporation and North Shore Gas Company shall conduct any studies and investigations related to the Groundwater RA, and Groundwater O&M as requested by EPA, in order to permit EPA to conduct reviews of whether the Groundwater Remedial Action as defined in the ROD and this Consent Decree is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

17. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the WMG & CP Site in accordance with the requirements of CERCLA and the NCP, after a reasonable opportunity for review and comment by Illinois EPA.

18. 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.

19. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the WMG & CP Site, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 82 or Paragraph 83 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 82 or Paragraph 83 of Section XXI (Covenants Not to Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 67 (record review). General Motors Corporation and North Shore Gas Company shall be responsible for undertaking any such further response actions related to WMG & CP Site groundwater. The City shall be responsible for undertaking any such further response actions related to the WMG & CP Site soils. In the event any of the Settling Defendants fails to perform its obligations pursuant to this Paragraph, the United States and the State of Illinois reserve their rights to pursue enforcement action against any or all of the Settling Defendants as provided in Paragraph 82 or Paragraph 83 (United States' reservations of liability based on unknown conditions or new

information) of this Consent Decree.

20. Submissions of Plans. If any of the Settling Defendants are required to perform any further response actions pursuant to Paragraph 19, they shall submit a plan for such work to Illinois EPA for review and comment and to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Performing Settling Defendants and City Obligations with Regard to QAPP. Performing Settling Defendants and the City for Soil O&M, shall use quality assurance, quality control, and chain of custody procedures for all groundwater design and compliance monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087)), 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, Performing Settling Defendants and the City for Soil O&M, shall submit to EPA for approval, after a reasonable opportunity for review and comment by the Illinois EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance, unless such QAPP has already been approved in the SOW. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Performing Settling Defendants and the

City for Soil O&M, shall provide by contract that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Settling Defendants and the City for Soil O&M, in implementing this Consent Decree. In addition, Performing Settling Defendants and the City for Soil O&M shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Performing Settling Defendants and the City for Soil O&M, shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Performing Settling Defendants and the City for Soil O&M, shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Performing Settling Defendants and the City for Soil O&M 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.

22. Upon request, Performing Settling Defendants and the City for Soil O&M, shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Performing Settling Defendants and the City for Soil O&M, shall notify EPA and the State not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA

and the State shall have the right to take any additional samples that they deem necessary. Upon request, EPA and the State shall allow Performing Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of Performing Settling Defendants implementation of the Work.

23. Performing Settling Defendants and the City for Soil O&M, shall submit to EPA three copies and to the State one copy of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Performing Settling Defendants with respect to the WMG & CP Site and/or the implementation of this Consent Decree unless EPA and the State agree otherwise.

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

IX. ACCESS, LAND USE, AND INSTITUTIONAL CONTROLS

25. a. Access. If the WMG & CP Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled directly or indirectly by any of the Settling Defendants, such Owner Settling Defendant shall, commencing on the date of lodging of this Consent Decree, provide the United States, the State, Performing Settling Defendants and their representatives, including EPA and such Party's respective contractors, with access at all reasonable times to the WMG & CP Site, or such other property owned or controlled directly or indirectly by such Owner Settling Defendant, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

(1) performance of the Work;

(2) monitoring the Work;

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

(4) conducting investigations relating to contamination at or near the WMG & CP Site;

(5) obtaining samples;

(6) assessing the need for, planning, or implementing additional response actions at or near the WMG & CP Site;

(7) implementing the Work pursuant to the conditions set forth in Paragraph 86 of this Consent Decree;

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

and access to only EPA and Illinois EPA and their contractors for the purpose of:

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

(10) determining whether the WMG & CP 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, including, but not limited to, the institutional controls required by this Consent Decree.

b. Land Use. Commencing on the date of lodging of this Consent Decree, Owner Settling Defendants shall refrain from using, or allowing others to use, the WMG & CP Site, or such other

property owned or controlled directly or indirectly by such Owner Settling Defendant, in any manner that would interfere with or adversely affect the integrity or protectiveness of the Remedial Actions to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, institutional controls to prevent any use of the WMG & CP Site, or such other property, in a manner not in accordance with the ROD, including, but not limited to, a prohibition on excavation and on groundwater use until such time that groundwater meets the federal and state drinking water standards and as further set forth in the Declaration of Environmental Easement and Restrictive Covenants (Appendix E). Notwithstanding the above, if an amended Soil O&M Work Plan for a modified cover is approved by EPA pursuant to Paragraph 11.c., the restrictions on land use and excavation may be modified if EPA, with the concurrence of Illinois EPA, determines that all the requirements set forth in the Soil Management Plan, or EPA-approved amended SMP, are satisfied.

c. Declaration of Environmental Easement and Restrictive Covenants; Owners' Association. Within 30 days of the entry of this Consent Decree, the Owner Settling Defendants shall submit to EPA for review and approval, after reasonable opportunity for review and comment by the State, the following documents: (a) a Declaration of Environmental Easement and Restrictive Covenants ("Declaration") in substantially the form set forth in Appendix E to this Consent Decree; (b) the SMP as set forth in Appendix F to this Consent Decree; and (c) a Declaration of Covenants, Conditions and Restrictions (the "Owners' Association CCR") in substantially the form set forth in Appendix H to this Consent Decree for the establishment of an owner's association (the "Owners' Association") which is responsible for maintaining all of the property respectively of each Owner Settling Defendant within

the WMG&CP Site in compliance with the terms of the Consent Decree, any appendices thereto, (including but not limited to Appendices E, F, and G as such may be amended from time to time with the approval of EPA) and any institutional controls that are required by the Consent Decree. Within 10 days of EPA's approval, such Owner Settling Defendants shall execute the aforementioned Declaration, SMP and Owners' Association CCR, and shall record these documents together with a copy of this Consent Decree as entered by the Court, at the Office of the Recorder of Deeds, Lake County, Illinois. Within 15 days of recording the aforementioned Declaration, SMP, Owners' Association CCR, and Consent Decree, such Owner Settling Defendants shall provide EPA and Illinois EPA with a certified copy of their recorded Declaration, SMP, Owners' Association CCR, and Consent Decree. Nothing in this Paragraph 25.c. shall relieve any Party of any obligations under this Consent Decree.

d. Conveyance.

(1) If any Owner Settling Defendant conveys any interest in the WMG & CP Site or any portion that it owns, including a lease, easement or mortgage, said Owner Settling Defendant shall subject such conveyance to the Declaration, SMP, Owners' Association CCR, and Consent Decree. Such Declaration and Owners' Association CCR shall: (i) reserve the right of access for the purpose of conducting any activity related to this Consent Decree; (ii) reserve the right to enforce the land/water use restrictions listed in Paragraph 25.b., above; and (iii) require the establishment of an Owners' Association as set forth in paragraph 25(c) for all the property owned by such Owner Settling Defendant within the WMG & CP Site. The conveying Settling Defendant shall reserve the access right and the right to enforce the land/water use restrictions for (i) the United States, on

behalf of EPA, and its representatives, as a third party beneficiary; (ii) the State of Illinois, on behalf of Illinois EPA, and its representatives, as a third party beneficiary; (iii) Performing Settling Defendants solely to perform their Soil RA, Groundwater RA, and Groundwater O&M obligations; and (iv) the City to perform its Soil O&M obligations in conformance with this Consent Decree.

(2) At least 45 days prior to such conveyance, the conveying Owner Settling Defendant shall (i) give written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee, and the date on which notice of the Consent Decree and a copy of the draft Deed (or other instrument of conveyance) was provided to the transferee; (ii) submit to EPA and the State for review and approval with respect to such conveyance the aforementioned draft Deed (or other instrument of conveyance) ("Deed") in substantially the form attached hereto as Appendix G, prepared in contemplation of the proposed conveyance (the draft model deed attached as Appendix G is for a fee conveyance, but if the estate being conveyed is something other than a fee, such as a lease, easement or mortgage, the instrument shall be modified accordingly) that subjects such conveyance to the Declaration and Owners' Association CCR and that is in recordable form and is enforceable under the laws of the State of Illinois; (iii) submit to EPA and the State for review and approval a current title insurance commitment for the property or property interest being conveyed that shows title to such property or property interest to be free and clear of any liens or encumbrances that interfere with the right of access in Paragraph 25(a) of this Consent Decree, or the right to enforce the land/water use restrictions provided under Paragraph 25(b) of this Consent Decree. If any such conveyance takes place prior to completion of the

Soil RA or Groundwater RA, the Owner Settling Defendant conveying the interest shall also give notice to the Performing Settling Defendants of the proposed conveyance at least 30 days prior to the conveyance.

(3) Within 30 days of the entry of this Consent Decree, the Owner Settling Defendants shall submit a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land owned by the Owner Settling Defendant and all prior liens and encumbrances on the property. Within 30 days of receipt of such title insurance commitment or other evidence of the title showing all prior liens and encumbrances on the property, EPA shall approve, in writing, the prior liens and encumbrances because such liens or encumbrances do not interfere with the right of access and the right to enforce the land/water use restrictions provided under Paragraph 25(b) of this Consent Decree or because, despite best efforts, the Owner Settling Defendant is unable to obtain release or subordination of such prior liens or encumbrances. Title shall be reviewed and must be approved by the U.S. Department of Justice in accordance with the U.S. Department of Justice Title Standards 2001, and approval of sufficiency of title must be obtained as required by 40 U.S.C. § 3111.

(4) After EPA approves and accepts the draft Deed (or other instrument of conveyance, including any lease or mortgage), which approval shall not be unreasonably withheld, the Owner Settling Defendant may convey the interest in property pursuant to the approved Deed (or other instrument of conveyance) provided an updated title commitment shows that nothing has occurred between the effective date of the title commitment and the date of recording that interferes with the right of access in Paragraph 25(a) of this Consent Decree or the right to enforce the land/water use restriction provided under

Paragraph 25(b) of this Consent Decree. The Owner Settling Defendant shall record such Deed (or other instrument of conveyance) with the Office of the Recorder of Deeds of Lake County, State of Illinois. Within 30 days of recording the Deed (or other instrument of conveyance), Owner Settling Defendant shall provide EPA and the State with a certified copy of the recorded Deed (or instrument of conveyance) and a copy of an owner's title insurance policy. Nothing in this Paragraph 25(d) shall relieve any Party of any obligations under this Consent Decree.

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

a. an agreement to provide access thereto for Performing Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a. of this Consent Decree;

b. an agreement, enforceable by the Settling Defendants, United States and the State, to abide by the obligations and restrictions established by Paragraph 25.b. of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Actions to be performed pursuant to this Consent Decree. Such restrictions may include but are not limited to institutional controls to prevent any use of the WMG & CP Site not in accordance with the ROD including, but not limited to, a prohibition on excavation and on

groundwater use until such time that groundwater meets the federal and state drinking water standards. The nature and content of the agreements secured by the Performing Settling Defendants pursuant to this Paragraph shall be subject to review and approval by EPA after reasonable opportunity for review and comment by the State.

27. For purposes of Paragraphs 25(d)(3) and 26 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money to a property owner that is not a Potentially Responsible Party at the WMG & CP Site in consideration for access, access easements, land/water use restrictions, and/or restrictive easements. If any access or land/water use restriction agreements required by Paragraphs 26.a. or 26.b. of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 25 of this Consent Decree are not submitted to EPA in draft form within 45 days of EPA's request, Performing Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Performing Settling Defendants have taken to attempt to comply with Paragraphs 25(d)(3) and 26 of this Consent Decree. The United States may, as it deems appropriate, assist Performing 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. Performing Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

28. 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 and the State's efforts to secure such governmental controls.

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

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Performing Settling Defendants shall submit to EPA and Illinois EPA one copy each of written periodic progress reports as defined in the SOW that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous reporting period; (b) include a summary of all results of sampling and tests and all other data received or generated by Performing Settling Defendants or their contractors or agents in the previous reporting period; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous reporting period; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next reporting period and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information

regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Performing Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next reporting period. Performing Settling Defendants shall submit these progress reports to EPA and the State by the tenth day after the end of every reporting period as defined in the SOW following the lodging of this Consent Decree until EPA notifies Performing Settling Defendants pursuant to Paragraph 50.b. of Section XIV (Certification of Completion). If requested by EPA or the State, Performing Settling Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work.

31. Performing Settling Defendants shall notify EPA of any change in the schedule described in the periodic progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Performing Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Performing Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator 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 Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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

34. Performing Settling Defendants shall submit 3 copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plans, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Performing Settling Defendants shall simultaneously submit 2 copies of all such plans, reports and data to the State.

35. All reports and other documents submitted by Performing Settling Defendants to EPA (other than the periodic progress reports referred to above) which purport to document Performing Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of Performing Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c)

modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within 15 days or such longer time period as may be approved by EPA, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36 (a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

38. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), the Settling Defendant shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 21-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 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

39. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to 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 XIX (Dispute Resolution).

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

Section XX.

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

XII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, Performing Settling Defendants, Illinois EPA and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. Performing Settling Defendants' Project Coordinator shall be subject to disapproval by EPA with reasonable opportunity for review by Illinois EPA, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Performing Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a WMG & CP Site representative for oversight of performance of daily operations during remedial activities.

43. Plaintiffs may designate other representatives, including, but not limited to, EPA and state employees, and federal and state contractors and consultants, to observe and monitor the

progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the WMG & CP Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

44. EPA's Project Coordinator, the State's Project Coordinator and the Settling Defendants' Project Coordinator will meet as requested by EPA's Project Coordinator. Telephonic meetings are acceptable.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of entry of this Consent Decree, Performing Settling Defendants shall establish and maintain financial security in the amount of $27,000,000 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 the Settling Defendants; or

e. a demonstration that one or more of Performing Settling Defendants satisfies the requirements of 40 C.F.R. Part 264.143(f);

f. for any Settling Defendant that is a local governmental entity, a demonstration satisfying the requirements of 40 C.F.R. §258.74(f) (Local Government Financial Test); or

g. an insurance policy or annuity in a form acceptable to EPA and issued by an insurer approved by EPA that provides insurance reimbursement or annuity payments for some or all of the estimated costs of the Work.

46. If Performing Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45.d. of this Consent Decree, Performing Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Performing Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45.d. or 45.e., they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Performing Settling Defendants shall, within 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 45 of this Consent Decree. Performing Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

47. If Performing Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 45 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the EPA, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Performing Settling Defendants shall submit a proposal for such reduction to EPA and Illinois EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA with reasonable opportunity for review and comment by Illinois EPA. In the event of a dispute, Performing Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

48. Performing 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, Performing Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Remedial Action

a. Within 30 days after Performing Settling Defendants conclude that either the Soil RA or Groundwater RA, respectively, has been fully performed and the Performance Standards for that Remedial Action have been attained, Performing Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Performing Settling Defendants, the City, EPA, and

the State. If, after the pre-certification inspection, Performing Settling Defendants still believe that the Soil RA or Groundwater RA has been fully performed and the Performance Standards for that Remedial Action have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 45 days of the inspection. In the report, a registered professional engineer and Performing Settling Defendants' Project Coordinator shall state that the Soil RA or Groundwater RA has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of the Performing Settling Defendants or Performing Settling Defendants' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Soil RA or Groundwater RA or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Soil RA or Groundwater RA and achieve the Performance Standards for that Remedial Action. Provided,

however, that EPA may only require Performing Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Performing Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Performing Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of either the Soil or Groundwater RA and after a reasonable opportunity for review and comment by the State, that the Soil RA or Groundwater RA has been performed in accordance with this Consent Decree and that the respective Soil RA or Groundwater RA Performance Standards have been achieved, EPA will so certify in writing to Performing Settling Defendants. Such certification shall constitute the Certification of Completion of the Soil RA or Groundwater RA, respectively, for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of either the Soil RA or Groundwater RA shall not affect Settling Defendants' obligations under this Consent Decree.

50. <u>Completion of the Work</u>

a. Within 90 days after Performing Settling Defendants conclude that all phases of the Work (including Groundwater

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

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work that the Performing Settling Defendants are responsible for has not been completed in accordance with this Consent Decree, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Work that they are responsible for. Provided, however, that EPA may only require Performing Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a

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

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

c. Within 90 days after the City concludes that all phases of the Soil O&M portion of the Work has been fully performed, the City shall schedule and conduct a pre-certification inspection to be attended by the City, EPA and the State. If, after the pre-certification inspection, the City still believes that the Soil O&M portion of the Work that the City is responsible for has been fully performed, the City shall submit a written report by a registered professional engineer stating that the Work that the City is responsible for has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible City official of the City's Project Coordinator:

> To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work that the City is responsible for has not been completed in accordance with this Consent Decree, EPA will notify the City in writing of the activities that must be undertaken by the City pursuant to this Consent Decree to complete the Work that they are responsible for. Provided, however, that EPA may only require the City 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 13.b., and that may have been modified by an ESD. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the City to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). The City shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

51. 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 WMG & CP Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Settling Defendants shall, subject to Paragraph 52, 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, Performing Settling Defendants shall notify the EPA Emergency Response Unit, Region 5. Performing Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Performing Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, Performing Settling Defendants shall reimburse EPA and the State all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

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

release of Waste Material on, at, or from the WMG & CP Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS

53. Payments for Interim Response Costs

a. Within 30 days of receipt of an invoice from EPA, Performing Settling Defendants shall pay to EPA the amount due for Interim Response Costs. Payment shall be made by FedWire Electronic Funds Transfer("EFT")to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing WMG & CP Site/Spill ID Number 05JB, and DOJ Case Number 90-11-3-07051. Payment shall be made in accordance with instructions provided to Performing Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Illinois 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.

b. At the time of payment, Performing Settling Defendants shall send notice that payment has been made to the United States, to EPA, to EPA's Regional Financial Management Officer and to the State in accordance with Section XXVI (Notices and Submissions)

c. The total amount to be paid by Performing Settling Defendants pursuant to Subparagraph 53.a. shall be deposited in the EPA Hazardous Substance Superfund.

d. Within 30 days of receipt of an invoice from Illinois EPA, Performing Settling Defendants shall pay to Illinois EPA the amount due for its Interim Response Costs. Payment shall be made in the form of a check or checks made payable to the "Illinois Environmental Protection Agency" designated for deposit in the "Hazardous Waste Fund". The Performing Settling Defendants shall

include the name and number of this case, along with the Illinois Site identification number (L 0971900047) and FEIN Numbers on all checks. The check(s) shall be delivered to:

Illinois EPA
Fiscal Services Section, Accounts Receivable Unit
P.O. Box 19276
1021 North Grand Avenue East
Springfield, Illinois 63794-9276

The Performing Settling Defendants shall simultaneously submit a copy of the transmittal letter and the check(s) to the Attorney General at:

Elizabeth Wallace
Senior Assistant Attorney General
Office of Illinois Attorney General
188 West Randolph Street, 20th Floor
Chicago, IL 60601

e. Within 30 days of receipt of an invoice from the Illinois Attorney General, Performing Settling Defendants shall pay to the Illinois Attorney General the amount due for its Interim Response Costs. Payment shall be made in the form of a check or checks made payable to the "Illinois Attorney General" designated for deposit in the "Attorney General State Projects and Court Ordered Distribution Fund (801 Fund)." The Performing Settling Defendants shall include the name and number of this case, along with FEIN Numbers on all checks. The check(s) shall be delivered to:

Illinois Attorney General's Office
Chief, Environmental Bureau North
188 West Randolph St., 20th Flr.
Chicago, Illinois 60601

The Performing Settling Defendants shall simultaneously submit a copy of the transmittal letter and the check(s) to the Attorney General at:

Elizabeth Wallace
Senior Assistant Attorney General
Office of Illinois Attorney General
188 West Randolph Street, 20th Floor
Chicago, IL 60601

54. Payments for Future Response Costs

a. Performing Settling Defendants shall pay to EPA all United States Future Response Costs not inconsistent with the National Contingency Plan, excluding the first $1,350,000 of EPA Future Oversight Costs. In the event that EPA takes over the work pursuant to Paragraph 86.a., all forgiven oversight costs will become due and payable. On an annual basis, the United States will send Performing Settling Defendants a bill requiring payment that includes an itemized cost summary. Performing Settling Defendants shall make all payments within 30 days of Performing Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 55. Performing 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," referencing the name and address of the party making the payment, EPA WMG & CP Site/Spill ID # 05JB, the DOJ case number 90-11-3-07051. Performing Settling Defendants shall send the check(s) to:

USEPA, Region 5
Attn: Superfund Accounting
P.O. Box 70753
Chicago, IL 60673

b. Performing Settling Defendants shall pay to the State and its agencies all State Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis, the Illinois EPA and the Illinois Attorney General will send Performing Settling Defendants a bill requiring payment that includes an itemized cost summary. Performing Settling Defendants shall make all payments within 30 days of Performing Settling Defendants receipt of each bill requiring payment, except as otherwise provided in Paragraph 55. As to the Illinois EPA, Performing Settling Defendants shall make all payments required by this Paragraph by check or checks

made payable to "Illinois Environmental Protection Agency", for deposit into the "Hazardous Waste Fund," and shall submit the check(s) according to the instructions in subparagraph 53.d. above. As to the Illinois Attorney General, Performing Settling Defendants shall make all payments required by this Paragraph by check or checks made payable to the "Illinois Attorney General" designated for deposit in the "Attorney General State Projects and Court Ordered Distribution Fund (801 Fund)", and shall submit the check(s) according to the instructions in subparagraph 53.e. above.

c. At the time of payment(s), Performing Settling Defendants shall send notice that payment(s) has been made in the form of copies of the checks to the United States, the EPA Project Coordinator and the Regional Financial Management Officer as specified in Section XXVI (Notices and Submissions) and to the Illinois EPA's Project Manager.

55. Performing Settling Defendants may contest payment of any Interim or Future Response Costs due under Paragraphs 53 and 54 if they determine that the United States or the State 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 (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Interim or Future Response Costs and the basis for objection. In the event of an objection, Performing Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States or all uncontested Interim or Future Response Costs to the State in

the manner described in Paragraphs 53 and 54. Simultaneously, Performing Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Illinois and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Performing Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Interim or 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, Performing Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States or the State prevails in the dispute, within 5 days of the resolution of the dispute, Performing Settling Defendants shall pay the sums due (with accrued interest) to the United States or the State, as appropriate, in the manner described in Paragraphs 53 and 54. If Performing Settling Defendants prevail concerning any aspect of the contested costs, Performing Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the State, as appropriate, in the manner described in Paragraph 55. Performing Settling Defendants shall be disbursed any balance of the escrow account remaining after payment has been made pursuant to the previous two sentences. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be

the exclusive mechanisms for resolving disputes regarding Performing Settling Defendants' obligation to reimburse the United States and the State for their Future Response Costs.

56. In the event that the payments required by Paragraph 53 are not made within 30 days of the effective date of this Consent Decree, or the payments required by Paragraph 54 are not made within 30 days of Performing Settling Defendants' receipt of the bill, Performing Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Interim Costs of EPA and the State under this Paragraph shall begin to accrue 30 days after the effective date of this Consent Decree. The Interest on EPA's and the State's Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Performing Settling Defendants' payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Performing Settling Defendants' failure to make timely payments under this Section. Performing Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 55.

XVII. INDEMNIFICATION AND INSURANCE

57. Settling Defendants' Indemnification of the United States and the State

a. The United States and the State do 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, the State, and their 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, the Settling Defendants agree to pay the United States and the State all costs they incur 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 or the State 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. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Settling Defendants notice of any claim for which the United States or the State plan to seek indemnification pursuant to this Paragraph.

58. Settling Defendants waive all claims against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, 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 WMG & CP Site,

including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States and the State 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 WMG & CP Site, including, but not limited to, claims on account of construction delays.

59. No later than 15 days before commencing any work on the WMG & CP Site and until the first anniversary of EPA's Certification of Completion of both the groundwater and soil remediation portions of the Remedial Action pursuant to Paragraph 49.b. of Section XIV (Certification of Completion), Performing Settling Defendants shall secure and shall maintain comprehensive general liability insurance with limits of three million dollars, combined single limit, and automobile liability insurance with limits of two million dollars, combined single limit, naming the United States, the other Settling Defendants and the State as additional insureds. In addition, for the duration of this Consent Decree, Performing Settling Defendants shall satisfy, and shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Performing Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Performing Settling Defendants shall provide to EPA and the State certificates of such liability insurance, and, if requested, a copy of each insurance policy. Performing Settling Defendants shall resubmit such certificates if requested each year on the anniversary of the

effective date of this Consent Decree. If Performing Settling Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Performing Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

60. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the 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 the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards, nor does Force Majeure include a delay caused by any of the Settling Defendants.

61. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's

designated representatives are unavailable, the Director of the Superfund Division, EPA Region 5, within 36 hours of when Settling Defendants first knew that the event might cause a delay. The obligations pursuant to this Paragraph shall be limited to the Settling Defendant, or Settling Defendants if more than one Settling Defendant are jointly and severally responsible for specific obligations pursuant to this Consent Decree, responsible for the specific obligations that have been delayed or that may be delayed. Within 10 days thereafter, Settling Defendants shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the 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. The Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or the Settling Defendants' contractors knew or should have known.

62. If EPA, after a reasonable opportunity for review

and comment by the State, 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, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

63. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, 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 Paragraph 61, 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.

XIX. DISPUTE RESOLUTION

64. 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 disputes between the Settling Defendants arising as a result of contractual obligations between the Settling Defendants or to actions by the United States or the State to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

65. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

66. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA or the State, if applicable, shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation

relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 67 or Paragraph 68.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA or the State, if applicable, will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by EPA or the State. EPA's or the State's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 67 or 68. Within 14 days after receipt of EPA's or the State's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA or the State and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 67 or 68, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 67 and 68.

67. 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 Superfund Division, EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 67.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 67.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 67.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 21 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 Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review

of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 67.a.

68. 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 66.a, the Director of the Superfund Division, EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within 21 days of receipt of the decision, the 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 Paragraph L 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.

69. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA 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 78. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

70. Settling Defendants shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 71, 72 and 73, below, for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). Each Settling Defendant shall be liable for stipulated penalties for its failure to perform the requirements of this Consent Decree as imposed upon that Settling Defendant by this Consent Decree, except that General Motors Corporation and North Shore Gas Company shall be jointly and severally liable for a failure to perform their obligations pursuant to this Consent Decree. "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, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

71. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph 71.b.:

Penalty Per Violation Per Day	Period of Noncompliance
$250	1st through 14th day;
$500	15th through 30th day;

$2,000	31st day and beyond.

b. Compliance Milestones:

(1) Submission of the Draft Soil and Groundwater RA Work Plans;

(2) Submission of Draft Soil O&M Work Plan;

(3) Submission of the Final Soil and Groundwater RA Work Plans;

(4) Submission of Final Soil O&M Work Plan;

(5) Completion of Soil and Groundwater RA Field Work;

(6) Completion of Soil O&M Field Work;

(7) Implementation of Remedial Action milestones set forth in the approved RA Work Plan schedules;

(8) Implementation of Operation and Maintenance (O&M) milestones set forth in the RA Work Plan schedules and the Soil O&M Plan.

72. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 9-11, 20, 21, 25.c, 25.d., 26.a, 26.b., 27, 30, 46, 49, and 50:

Penalty Per Violation Per Day	Period of Noncompliance
$100	1st through 14th day;
$200	15th through 30th day;
$300	31st day and beyond.

73. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 86 (Work Takeover) of Section XXI (Covenants Not to Sue by Plaintiff), Performing Settling Defendants shall be liable for a stipulated penalty in the amount of

$1,000,000.

74. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, EPA Region 5, under Paragraph 67.b. or 68.a. of Section XIX (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 issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

violation.

76. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless the Settling Defendant(s) responsible for payment of the Stipulated Penalties invoke(s) the Dispute Resolution procedures under Section XIX (Dispute Resolution). The obligations pursuant to this Paragraph shall be limited to the Settling Defendant, or Settling Defendants if more than one Settling Defendant are jointly and severally responsible for specific obligations pursuant to this Consent Decree, responsible for the specific actions or omissions that resulted in the demand for the payment of penalties. 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 U.S. EPA, Region 5, P.O. Box 56977, Chicago, IL 60690, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and WMG & CP Site/Spill ID # 05JB, the DOJ Case Number 90-11-3-07051, 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 XXVI (Notices and Submissions).

77. 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.

78. Penalties shall continue to accrue as provided in Paragraph 74 during any dispute resolution period, but need not be paid until the following:

a. if the dispute is resolved by agreement or by

a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the 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 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 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

79. 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 76.

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

penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree. Further, the United States and the State shall not seek separate penalties for the same alleged violation of the requirements of this Consent Decree.

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

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

81. a. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 82, 83, and 85 of this Section, the United States and the State covenant 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, 42 U.S.C. § 6973 (for the United States) and 415 ILCS 5/22.2(f) (for the State) relating to the OMC Site, including, but not limited to, the WMG & CP Site. Except with respect to future liability, these covenants not to sue shall take effect upon entry of this Consent Decree.

b. With respect to future liability, these covenants not to sue for Performing Settling Defendants shall take effect for soil upon Certification of Completion of Soil RA and for groundwater upon Certification of Completion of Groundwater RA by EPA pursuant to Paragraph 49.b. of Section XIV (Certification of Completion).

c. With respect to future liability for the Buyout Settling Defendant and in recognition of the payments to be

made into the WMG & CP Site Trust Fund, as defined in the settlement agreement entered into by the Buyout Settling Defendant and the Performing Settling Defendants, these covenants not to sue for the Buyout Settling Defendant shall take effect upon the issuance of the Certification of Completion of Soil RA by EPA pursuant to Paragraph 49.b. of Section XIV (Certification of Completion).

d. With respect to future liability for Owner Settling Defendants, these covenants not to sue shall take effect upon submission to EPA of a certified copy of the recorded Notice to Successors in Title pursuant to Paragraph 9.a. and a certified copy of the recorded Declaration of Restrictive Covenants and Environmental Easement pursuant to Paragraph 25.c.

e. These covenants not to sue are conditioned upon the complete and satisfactory performance by the Settling Defendants of their obligations under this Consent Decree, including any modifications to the SMP, the Technical Memorandum or Explanation of Significant Differences to the ROD. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

82. United States' and the State of Illinois' Pre-certification Reservations

Notwithstanding any other provision of this Consent Decree, the United States and the State, if applicable, reserve, 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 to perform further response actions relating to the OMC Site or to reimburse the United States and the State for additional costs of response at the OMC Site, if prior to Certification of Completion of the Remedial

Action:

(1) conditions at the OMC Site, previously unknown to EPA or the Illinois EPA, are discovered; or

(2) information, previously unknown to EPA or the Illinois EPA, is received, in whole or in part, and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment; or

(3) information and conditions are disclosed to EPA or Illinois EPA which indicate that Settling Defendants are liable for disposal or release of Waste Materials, or the arrangement for disposal or release of Waste Materials outside of the WMG & CP Site.

83. United States' and the State of Illinois' Post-certification Reservations

Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, 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 to perform further response actions relating to the OMC Site or to reimburse the United States and the State for additional costs of response at the OMC Site, if subsequent to Certification of Completion of the Remedial Action:

(1) conditions at the OMC Site, previously unknown to EPA or the Illinois EPA, are discovered; or

(2) information, previously unknown to EPA or the Illinois EPA, is received, in whole or in part, and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment; or

(3) information and conditions are disclosed to EPA or Illinois EPA which indicate that Settling Defendants are liable for disposal or release of Waste Materials, or arrangement for disposal or release of Waste Materials outside of the WMG & CP Site.

84. For purposes of Paragraph 82(1) and 82(2), the information and the conditions known to EPA and the State shall include only that information and those conditions known to EPA and the State as of the date the ROD was signed and set forth in the Record of Decision for the WMG & CP Site and the administrative record supporting the ROD and also all information and conditions known to EPA and the State regarding the OMC Site at the time of lodging of this Consent Decree. For purposes of Paragraph 83(1) and 83(2), the information and the conditions known to EPA and the State 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 ROD, the post-ROD administrative record, all information and conditions known to EPA and the State regarding the OMC Site prior to Certification of Completion of the Remedial Action, or in any information received by EPA or the State pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

85. 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 81. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including, but not limited to, the following:

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 Materials outside of the OMC Site;

c. liability for future disposal of Waste Material at the OMC Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA or the Illinois EPA;

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 13 (Modification of the SOW or Related Work Plans); and

h. with respect to any portion of the OMC Site other than the WMG & CP Site, any liability that any Settling Defendant would have if it becomes an owner or operator of any portion of the OMC Site other than the WMG & CP Site after July 21, 2004.

86. Work Takeover.

a. In the event EPA determines, after reasonable opportunity for review and comment by the State, that Performing Settling Defendants have ceased implementation of any portion of the Soil RA, Groundwater RA or Groundwater O&M, are seriously or repeatedly deficient or late in their performance of any portion of the above-referenced Work, or are implementing those portions of 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 that Work as EPA determines, after reasonable opportunity for

review and comment by the State, is necessary. Performing Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 67, 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 XVI (Payments for Response Costs).

b. In the event that EPA determines, after reasonable opportunity for review and comment by the State, that the City has ceased implementation of any portion of the Soil O&M portion of the Work that it is required to perform, is seriously or repeatedly deficient or late in its performance of the Soil O&M portion of the Work or is implementing that 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 Soil O&M portion of the Work as EPA determines, after reasonable opportunity for review and comment by the State, is necessary. The City may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 67, to dispute EPA's determination that takeover of the Soil O&M portion of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Soil O&M portion of the Work shall be considered Future Response Costs that the City shall pay pursuant to Section XVI (Payment for Response Costs).

87. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

88. Covenant Not to Sue. Subject to the reservations in Paragraph 89, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the OMC Site, past response actions, and Past, Interim and Future Response Costs as defined herein, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

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

c. any claims arising out of response actions at or in connection with the OMC Site, including any claim under the United States Constitution, the State of Illinois 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.

89. a. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States or the State while acting within the scope of his office or employment under circumstances where the United States or the State, if a private person, would be liable to the claimant in accordance with the law of

the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling 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.

b. The Settling Defendants reserve any right that they may have to seek contribution from the Illinois EPA or the Illinois Attorney General in an appropriate forum for any future acts of gross negligence described under 415 ILCS 5/22.2(j)(3), which cause or contribute to the release of a hazardous substance at the OMC Site. The Illinois EPA and the Illinois Attorney General reserve all rights and defenses available to them. The Settling Defendants have the burden of going forward and proving by a preponderance of the evidence that actions of the Illinois EPA or the Illinois Attorney General constitute gross negligence.

90. 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).

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

disposal or treatment, of hazardous substances at the WMG & CP Site, or having accepted for transport for disposal or treatment of hazardous substances at the WMG & CP Site, if the materials contributed by such person to the WMG & CP Site containing hazardous substances did not exceed the greater of: (i) 0.002% of the total volume of waste at the WMG & CP Site; or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

b. 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 WMG & CP Site by such person contributed or could contribute significantly to the costs or response at the WMG & CP Site.

92. 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 WMG & CP Site, including for contribution, against any person that has entered into a final CERCLA §122(g) de minimis settlement with EPA with respect to the WMG & CP Site as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the WMG & CP Site against such Settling Defendant.

93. The Settling Defendants agree to withdraw with prejudice, any and all pending claims within thirty (30) days of entry of this Consent Decree, and to waive any and all claims, causes of action, proofs of claim, applications for administrative expense, including claims relating to any insurance policies of OMC and the Trustee in Bankruptcy, that they may have for matters relating to the OMC bankruptcy pending in the Bankruptcy Court for the Northern District of Illinois styled: *In Re: Outboard Marine Corporation, et*

al., Case No. 00-B-37405 (Bankr. N.D. Ill).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

94. Except as provided in Paragraphs 91 and 92, above, 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 Paragraphs 91, 92 and 93 above, 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 all Matters Addressed against any person not a Party hereto. Nothing in this Consent Decree shall govern or affect matters which are or may be the subject of dispute between Larsen Marine and the City, including, but not limited to, those matters which are or may be the subject of that certain action pending in the Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois, styled *Larsen Marine Service, Inc. v. City of Waukegan, et al. Case No. 02 MR 1333.*

95. The Parties agree, and by entering this Consent Decree this Court finds, that each Settling Defendant is entitled, as of the effective date of this Consent Decree, 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, so long as such Settling Defendant performs its obligations under this Consent Decree, including the obligations of the Buyout Settling Defendant to complete its payment obligations into the WMG & CP Site Trust Fund pursuant to its settlement agreement with

the other Settling Defendants. If any individual Settling Defendant fails to meet its obligations pursuant to the Consent Decree, one or more of the other Settling Defendants may petition the Court to find that the non-conforming Settling Defendant is in violation of the Consent Decree and seek an appropriate remedy. This provision is not intended to affect or in any way change any contractual rights or obligations between the Settling Defendants agreed to on or before the Effective Date.

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

97. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for Matters Addressed in this Consent Decree they will notify in writing the United States and the State within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

98. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the WMG & CP 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 or the State in the subsequent proceeding

were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

XXIV. ACCESS TO INFORMATION

99. Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to Work activities at the WMG & CP 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 and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

100. Business Confidential and Privileged Documents

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling

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

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

101. No claim of confidentiality or privilege 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 WMG & CP Site.

XXV. RETENTION OF RECORDS

102. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b. of Section XIV (Certification of Completion of the Remedial Action), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or

control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the WMG & CP Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 49.b., Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

103. At the conclusion of this document retention period, Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, Settling Defendants shall deliver any such records or documents to EPA or the State. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

104. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after

thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the WMG & CP Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the WMG & CP Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

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

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-07051

As to EPA:

Kevin Adler
EPA Project Coordinator
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

As to the Regional Financial Management Officer for payments only:

Cyprian Ejiasa
Comptroller, MF-10J
U.S. EPA, Region 5
77 West Jackson Boulevard

Chicago, IL 60604-3590

As to the State:

Erin Rednour
Bureau of Land
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

As to Performing Settling Defendants:

Alan Van Norman
Conestoga Rovers & Associates
651 Colby Drive
Waterloo, ON N2V 1C2
Canada
Business:
Phone (519) 884- (Direct)
Fax (519) 884-0525 (Fax)
mailto:avannorman@craworld.com

Stephen H. Armstrong Esq. (Steve)
McGuireWoods LLP
77 West Wacker Drive, Suite 4400
Chicago, IL 60601-1681
Phone (312) (Direct)
mailto:

Jerome I. Maynard
Dykema Gossett Rooks Pitts, PLLC
10 S. Wacker Drive
Suite 2300
Chicago, IL 60606
Phone DD: (312)
Fax: (312) 627-2302
mailto:

As to the City of Waukegan:

Mayor's Office
City of Waukegan
106 N. Utica Street
Waukegan, IL 60085

and

Jeffery D. Jeep, Esq.
The Jeff Diver Group, LLC
1749 South Naperville Road
Suite 102
Wheaton, IL 60187
Office: (630)
Fax: (630) 690-2812
mail to:

As to Larsen Marine Service, Inc.:

Jerry Larsen
625 Sea Horse Drive
Waukegan, IL 60085
(847) (phone)
(847) 336-5530 (fax)

Kathy Larsen Sivia
625 Sea Horse Drive
Waukegan, IL 60085
(847) (phone)
(847) 336-5530 (fax)

and

Mark Steger
Holland & Knight LLP
131 South Dearborn Street, 30th Floor
Chicago, IL 60603
(312) one)
(312) 578-6666 (fax)
e-mail:

As to EJ & E:

Robert N. Gentile
Vice President-Law
Elgin Joliet & Eastern Railway Company
600 Grant Street, Suite 1887
Pittsburgh, Pa 15219
phone(412)
fax (412)433-4645
e-mail:

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

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

"Appendix A" is the Administrative Order on Consent for Remedial Design dated July 2, 2001.

"Appendix B" is the SOW.

"Appendix C" is the Map of the OMC Site, including the WMG & CP Site, Operable Unit #2 of the OMC Superfund Site.

"Appendix D" is the Notice of Land Use Restrictions and Institutional Controls.

"Appendix E" is the Declaration of Environmental Easement and Restrictive Covenants.

"Appendix F" is the Soil Management Plan.

"Appendix G" is the Deed with Reservation of Environmental Easement and Restrictive Covenant.

"Appendix H" is the Owner's Association Declaration of Covenants, Conditions and Restrictions.

"Appendix I" is the Technical Memorandum.

"Appendix J" is the Soil O&M Trust Agreement.

XXX. COMMUNITY RELATIONS

109. Settling Defendants shall propose to EPA and the State their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, 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 or the State to explain activities at or relating to the WMG & CP Site.

XXXI. MODIFICATION

110. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA, after reasonable opportunity for review and comment by the State, and the Settling Defendants. All such modifications shall be made in writing.

111. Except as provided in Paragraph 13 ("Modification of the SOW or Related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

113. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent, after a reasonable opportunity for review and comment by Illinois EPA, if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The State shall have a reasonable opportunity to review

and comment on all public comments. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

XXXIII. SIGNATORIES/SERVICE

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

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

117. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXIV. FINAL JUDGMENT

118. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment among the Parties. 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 _____, 2004.

_____
United States District Judge

FOR THE UNITED STATES OF AMERICA:

Date 7.21.04

Thomas L. Sansonetti
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date 7/22/04

Francis J. Biros
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20530-7611

Patrick Fitzgerald
United States Attorney
Northern District of Illinois
U.S. Department of Justice
219 South Dearborn Street, 5th Fl.
Chicago, IL 60604

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date 6-16-04

Bharat Mathur
Acting Regional Administrator,
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604

Date 6/8/04

Susan M. Tennenbaum
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, IL 60604

FOR PEOPLE OF THE STATE OF ILLINOIS

ex. rel. LISA MADIGAN
Attorney General of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos Litigation Division

Date 7/27/04

Rosemarie Cazeau, Chief
Environmental Bureau
Assistant Attorney General

FOR ILLINOIS ENVIRONMENTAL PROTECTION AGENCY:

Date 7/27/04

Joseph E. Svoboda
Chief Legal Counsel

FOR THE CITY OF WAUKEGAN:

Date 5/17/04

Signature

Print

Name: Richard H. Hyde

Title: Mayor

Company Name and Address:

City of Waukegan
410 Robert V. Sabonjion Place
Waukegan, IL 60085

Phone:

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

Print

Name: Brian S. Grach

Title: Corporation Counsel

Company Name and Address:

Diver, Grach, Quade & Masini
111 North County Street
Waukegan, IL 60085-4344

Phone:

Fax:

e-mail:

FOR ELGIN, JOLIET & EASTERN RAILWAY COMPANY:

Date 5-24-04

Signature: _____

Print

Name: ROBERT N. GENTILE

Title: V.P. - LAW, GENERAL COUNSEL & SECRETARY

Company Name and Address

SUITE 1887

600 GRANT STREET

PITTSBURGH, PA. 15219

Phone: ( )

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

Print

Name: NANCY GESTIEHR

Title: ADMINISTRATIVE ASSISTANT AND ASSISTANT SECRETARY

Company Name and Address:

TRANSTAR, INC.

SUITE 1887

600 GRANT STREET

PITTSBURGH, PA. 15219

Phone: ( )

Fax: ( )

FOR GENERAL MOTORS CORPORATION:

Date June 9, 2004

Signature: _____

Print

Name: Michelle T. Fisher

Title: Attorney

Company Name and Address:

General Motors Corporation

MC. 482-C24-D24

300 Renaissance Center

P.O. Box 300

Detroit, MI. 48265-3000

Phone: (_____

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

Print

Name: _____

Title: _____

Company Name and Address:

_____

_____

_____

_____

Phone: _____

Fax: _____

FOR LARSEN MARINE SERVICE , INC.:

Date MAY 27 2004 Signature: _____

Print

Name: GERALD N LARSEN

Title: President

Company Name and Address:

Larsen Marine Service, Inc.

625 Sea Horse Drive

Waukegan, IL 60085

Phone: _____

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

Print

Name: Mark J. Steger

Title: Partner

Company Name and Address:

Holland & Knight LLP

131 S. Dearborn Street

30th Floor

Chicago, IL 60603

Phone: _____

Fax: _____

FOR NORTH SHORE GAS COMPANY:

Date MAY 25, 2004

Signature

Print

Name: Gerard J. Fox

Title: Vice President - Administration

Company Name and Address:

North Shore Gas Company

130 E. Randolph Drive

Chicago, IL 60601

Phone:

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

Print

Name: Stephen H. Armstrong

Title: Partner

Company Name and Address:

McGuireWoods LLP

77 West Wacker Drive

Suite 4400

Chicago, IL 60601

Phone:

Fax: