



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

J.F. KENNEDY FEDERAL BUILDING, BOSTON, MASSACHUSETTS 02203-2211

Site: Union Chemical
Break: 10.1
Other: De Minimis
AR

COPY
527973

August 14, 1991

TO: ADDRESSEES ON ATTACHED LIST

Re: Union Chemical Superfund Site, Administrative Order by Consent, U.S. EPA CERCLA Docket No. I-91-1067

Dear Addressees:

This letter was prepared to inform you that the United States has determined that changes are necessary to the Declaration of Trust attached to the de minimis Administrative Order by Consent (the "settlement agreement") for the Union Chemical Superfund Site, which you signed on or about May 24, 1991.

As you will recall, EPA and the State of Maine made the de minimis settlement offer to eligible potentially responsible parties ("PRPs") at the Union Chemical Superfund Site (the "Site"), such as your company, which contributed less than 0.20% of waste sent to the Site. In this settlement offer, the de minimis parties agreed that they would send their required payment to the Union Chemical De Minimis Trust Fund (the "Trust Fund") after a 30-day public comment period.

Prior to the public comment period, the settlement agreement has undergone review at the U.S. Department of Justice. The Department of Justice has asked us to make the changes described below to the Declaration of Trust, to ensure compliance with the requirements of the Miscellaneous Receipts Act, 31 U.S.C. § 3302.

The changes to the Declaration of Trust are contained in the underlined material on the attached three (3) pages. The changes essentially provide that, while the money held in the Trust Fund may (in certain circumstances) be used by the major PRPs to conduct the remedial cleanup at the Site, the money in the Trust Fund cannot be used to reimburse the United States for its past costs incurred at the Site. These changes do not in any way affect or change the rights or obligations of any de minimis PRPs under the settlement agreement.

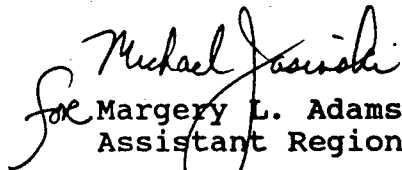
I have enclosed a complete, clean copy of the new Declaration of Trust (known as Appendix C). Please substitute this new Declaration of Trust for the one originally sent to you on April 26, 1991.



Please note that your payment is not yet due under this settlement agreement. EPA or the Union Chemical Site Group Administrator will notify you when payment is due.

Thank you for your cooperation in this matter.

Sincerely,

Margery L. Adams

Assistant Regional Counsel

Enclosures: (A) Alphabetical List of De Minimis Settling Parties
(B) Three (3) Pages Trust Modifications
(C) Complete, Clean Copy of New Declaration of Trust

cc: Michael Jasinski, Remedial Project Manager
Henry Friedman, Department of Justice
Dennis Harnish, Maine Department of Attorney General
David Wright, Maine Department of Environmental Protection
David Rosenblatt, c/o Burns & Levinson for the Union
Chemical Site PRP Group Executive Committee

Enclosure A

ALPHABETICAL LIST OF SETTLING DE MINIMIS PRP's (UNION CHEMICAL SUPERFUND SITE):

Adams Company, J.K. Inc.
Adams Plastic Company Inc. (American Home Products Corporation)
Adams-Russell Co., Inc. (M/A-COM, Inc.)
Adventure Manufacturing Co., Inc.
Affiliated Laboratory Inc.
Albany International Corp.
Alco Dispensing Systems (through Alco Standard Corporation)
Alltex-Standard Uniform, Inc.
American Biltrite Corporation
American Business Systems, Inc.
American Electro Products (National Integrated Industries, Inc.)
American National Can Company (formerly American Can Company)
American Stabilis Inc.
AMF Inc.
Ampad Incorporated
Amphenol/Bunker Ramo (Amphenol Corporation)
Amplex Corp. (Norton Company d/b/a)
Amtrol Inc.
Arden Jewelry Manufacturing Co.
Ark-Les Corporation
Artfaire Company Inc./CPS Corporation
Arwood Machine Corp.
Ascutney Metal Products Inc.
Astro Wire & Cable Co.
Audio Accessories, Inc.
Autowize (a Unit of ITT Corporation)
BIF (a Unit of General Signal)
Baker Company Inc., The
Balfour Company, LG, Inc. (New Bank of New England, Trustee for
Lloyd G. Balfour)
Ball and Socket Plastics Company (Balso Liquidating Trust)
Banton, Inc.
Barry Controls Div. (Applied Power Inc.)
Bass Harbor Marine
Becton-Dickinson and Company
Biddeford Industries (GWNCO)
Borduas Graphics
Bottoms USA, Inc.
Brunell Electroplating Corp., AA
Bryant Grinder Corporation (Textron Inc.)
Bull Metal Products
Burndy Corporation
Burton Industries, Inc. (Control Techniques, Inc.)
Camden Tanning Corporation
Carleton Wollen Mills, Inc.
Carr Company (TRW Inc.)
Central Coating Company
Charles D. Burnes Co, Inc.

Chem-Clean Furniture Restoration (Alf)
Chem-Clean Furniture Restoration (Allen)
Chem-Clean Furniture Restoration (Sp)
Chemical Pollution Control, Inc.
Chromalloy (Standard Foundry Company)
Church Seat Company (Division of Bemis Manufacturing Co.)
Cianbro Corporation
Clark-Sawyer, Inc. (W.H. Sawyer Lumber Co., Inc. and George H. Clark & Co., Inc.)
Clarostat Manufacturing Company, Inc.
Clinton Instrument Co., The
Colby College
Coles Express (Coles Enterprises d/b/a)
Colonial Services (Kittery Laundry, Inc. d/b/a)
Columbia Dry Cleaners
Columbia Manufacturing Co.
Computrol/Kidde (THORN Automated Systems, Inc.)
Congress Technical Spray Co., Inc.
Consolidated Pressure Sensors Division/Eaton Corporation
Continental Corporation
Conway Office Products, Inc.
Cooley, Inc.
Cooperative Microwave (Microwave Techniques as successor)
Crosby Group Inc.
Crownmark Corporation (CSB Corporation f/k/a)
Custom Coating & Laminating Corp.
Danforth Division of The Eastern Company
Data General Corporation
Data Products, New England Inc.
Datel Inc.
Davol Inc.
Department of the Air Force
Devcon Corporation (ITW Devcon)
Dexter Shoe Company
Dielectric Communications
Dienes & Neuenkamp
Dresser Industries, Inc. (Instrument Division)
Edlund Company Inc.
Edwards Company, Inc.
Electrix Inc.
Electro-Films Inc.
Electronics Corporation Of America
Elektrisola Inc.
Elmers Pipe Inc.
Emhart Corporation - Metal Products Division (Emhart Industries, Inc.)
Ensign-Bickford Company, The
Environmental Systems Corp. (by D.D. Bean & Sons Co.)
Erving Paper Mills
Esten Machine (Lucas Epsco Inc.)
Ethan Allen Inc.
Fairchild Semiconductor Corporation

Fiberglass Products Incorporated
 FMC Corporation
 Fothergill Composites Incorporated (n/k/a Courtaulds Structural Composites Inc.)
 Foxboro Company, The
 Franklin Electro Plating Co., Inc.
 Frem Corporation
 General Tire (GenCorp Inc., f/k/a)
 Global Specialties Incorporated (d/b/a Interplex Electronics, Inc.)
 Gould, Inc.
 Greenberg Company, BB
 Grobet File Co. of America Inc.
 Grumbacher Inc., M
 GTE Products Corporation
 Guardian (Cooper Industries, Inc. on behalf of Guardian)
 HADCO Corporation (f/k/a Hadco Printed Circuits Inc.)
 Hallowell Shoe Company
 Hamblett & Hayes, Co. - Polar Chemicals Div. (subsidiary of Van Waters & Rogers Inc.)
 Harris Inc., Samuel P.
 Hebron Academy
 Herman Shoe Co. (Joseph M. Herman Shoe Company, Inc.)
 Hewitt Auto Body
 HI-G Company Inc.
 Hill Acme Company (Hill-Loma, Inc. d/b/a)
 Hinckley & Company, Henry R.
 Hobson & Motzer Inc.
 Holyoke Card & Paper Co.
 Independent Cable Inc.
 Indiana Screw Machine Products, Inc.
 Interconics (BMC Industries, Inc.)
 Interstate Uniform Services (Unifirst Corporation)
 Ionics Inc.
 ITT Vulcan Electric (Division of ITT Corporation)
 Jameson & Co., Inc., C.F.
 James River - Otis (James River Paper Company, Inc.; James River Corp. of Virginia)
 JBT Switches (Eaton Corporation)
 Kalloch Fuel Service
 Kennebunk, Town of
 Kenway Corporation
 Kingfield Wood Products
 Kittery Laundry Inc. (d/b/a Colonial Services)
 Knox Semiconductor, Inc.
 Knox Woolen Company (n/k/a Mount Vernon Mills)
 L & A Heel Corp.
 Lamson and Goodnow Manufacturing Company
 Lawrence Leather Co, Inc. AC
 LCP - Maine Inc.
 Leen Company
 Levin Plating Company, Inc.

Levinson Audio Systems Ltd., Mark
Libbey Company, WS
Liberty Research Co., Inc.
Lunt Silversmiths (Rogers Lunt & Bowlen Co. d/b/a)
Madico Incorporated (Keyes Fibre Company)
Madison/Wil Tec Insul Wire
Maine Electronics, Inc.
Maine Medical Center
Maine Printing & Business Forms Co.
Maine Yankee Atomic Power Company
MARKEM Corporation
Matchless Buff Co., Inc.
McCord Winn (Textron Inc.)
Melville Corporation
Messer Company, WA
Metalart Buckle Company
Meyer/World Packaging Machinery (Figgie International Inc.)
Microwave Techniques
Mid-State Machine
Miller Shoes (Melville Corporation)
Milton Bradley Company (Division of Hasbro, Inc.)
Modern Electroplating Company Inc.
Modutec Incorporated (Crompton Modutec, Inc.)
Monarch Industries Incorporated
Moore Chemical Company
Morgan Construction Company
Morningstar of Maine (Costar Corporation)
Nachi Bearing Corporation
Nashua Wood Products Incorporated
Naval Air Station Brunswick
New England Aerosol & Packaging, Inc.
New England Industrial Waste, Inc.
New England Rack Co., Inc.
Newman & Company, George
Nichols Fluid Machinery (Parker- Hannifin Corp.)
Nichols, WH (Parker-Hannifan Corporation)
Northampton Manufacturing Corporation
Northeast Shoe Company
NRC Incorporated
Nuroco Woodworking, Inc.
Omni-Wave Electronics Corporation (RCM Corporation)
Pacesetter Products Incorporated
Pak 2000/Division of Ocor Products Corp.
Parametrics
Parker Metal Corporation
Parlex Corporation
Permuthane (Division of ICI Americas)
Pervel Industries
Phalo Corporation
Photo Fabrication Engineering, Inc.
Pontiac Weaving Corporation
Port Poly Incorporated (Key Packaging Industries, Inc.)

Power Electronics Corp.
Precision Components Incorporated
Preferred Electronics, Inc.
Pressmet Corporation, The
Pruefer Manufacturing Company, Inc., G.
Quality Spraying & Stenciling Co.
Quin-T Corporation--NH
Rec-Tec Incorporated (PDS Technologies, Inc.)
Reece Corporation (AMF Reece f/d/b/a)
Rich Tool & Die Company
Rosenthal Technik USA Limited (Renaissance Glass, China and
Silver Corporation)
Rudolph Beaver Company (Becton Dickinson and Company)
Rule Industries, Inc.
S&H Precision Manufacturing Co. Inc.
S&S Plastics
SD Warren Company
S.N. Foster Company, Inc.
Safety-Kleen Corp.
SCA Chemical Services (Chemical Waste Management, Inc.)
Scola Enterprises, Inc.
Scott Paper Co.
Sevcon, Division Tech/Ops. (Sevcon, Inc.)
Shape Inc.
Shape Systems Design I (Division of Shape Inc.)
Shepard Chevrolet Inc. (Shepard Motors, Inc.)
Silicon Transistor Corporation
SNOCRAFT
Songo of Maine Inc.
Spaulding & Slye Company
Spectrum Coatings Laboratories
Speidel (Textron Inc.)
Spencer Press, Inc.
Spot-Bilt Inc. (Hyde Athletic Industries, Inc.)
Sprague Electric Co.
Spray Me Inc.
Spray-O-Matic Corp.
Sproul DryCleaners (Winnrich, Inc. d/b/a)
St. Johnsbury Trucking Company Inc.
Stadium Auto Body Inc.
Stahl Finish (Division of ICI Americas)
Sterling-Clark-Lurton, Corp.
Stinson Canning Company (n/k/a S.S.T. and S., Inc.)
Striar Textile Mill
Stultz Electric Motor Systems
Sturm, Ruger & Company, Inc.
Styletek (Ausimont U.S.A. Inc.)
Suffolk Services Inc.
Summagraphics Corporation
Surface Coatings Inc.
Swank Inc.
Symmons Industries, Inc.

Tadco Inc.
Technipower, Inc.
Tek Coating Company, Inc.
Tex-Tech Industries Inc.
Theatre Techniques, Inc.
Tibbetts Industries Inc.
Tillotson Rubber Co.
Total Waste Management Corporation
Touraine Paints, Inc.
Transco
Transcom Electronics Inc. (by Alcatel NA Network Systems Corp.)
Union Butterfield Division (Litton Industrial Automation Systems,
Inc.)
Union Camp Corp.
Unitrode Corp.
U.S. Coast Guard
USM Corporation - Bailey Manufacturing Division (Emhart
Industries, Inc.)
Valiant Finishing Company (by Cambridge Tool & Die)
Velcro USA Inc.
Viner Shoe Co. (Wolverine World Wide, Inc.)
Webber Hospital Association (d/b/a Southern Maine Medical Center)
Westfield Electroplating Company
Whitman Products Limited (Whitman Skivertex, Ltd. f/k/a)
Wright Steel & Wire Company, GF

Enclosure B

modifications to:

APPENDIX C

DECLARATION OF TRUST

THE UNION CHEMICAL ~~SITE SETTLEMENT~~ DE MINIMIS TRUST--1991

Dated: _____, 1991

Bank of Boston of Suffolk County, Massachusetts, hereby declares that it and its successors in trust will hold any and all property that may be transferred to it as Trustee as follows:

FIRST: Name of Trust

This trust is to be known as "The Union Chemical Site Settlement De Minimis Trust--1991" ("the Trust").

SECOND: Recitals and Declaration of Purpose

1. Recitals

The United States Environmental Protection Agency ("EPA") has alleged that hazardous substances were transported to, handled, treated, stored and/or disposed of at the Union Chemical Site, located in South Hope, Maine ("the Site").

The State of Maine, acting through its Department of Environmental Protection ("DEP"), has investigated the Site to determine the amount and location of allegedly hazardous substances situated thereon or therein, and has removed certain materials from the Site.

The EPA has also investigated the Site, performed removal actions on the Site, and placed the Site on the National Priorities List for response action, pursuant to the provisions of Section 105(8) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §9601 et seq., at §9605(8).

The EPA and DEP have notified, in writing, a number of companies, institutions and persons that they may be potentially responsible under CERCLA and State law for response costs incurred or to be incurred by EPA and DEP in connection with the investigation and cleanup of the Site ("Potentially Responsible Parties" or "PRPs").

The EPA and DEP determined that a Remedial Investigation and Feasibility Study ("RIFS") of the Site must be prepared to analyze what environmental problems exist at the Site and what measures may be necessary to address such problems.

Certain of the Potentially Responsible Parties performed that RIFS pursuant to Administrative Order by Consent, EPA Docket Number 1871104, entered into with EPA and DEP on November 4, 1987.

Based, in part, upon the contents and conclusions of the RIFS, EPA and DEP have determined that a settlement with the *De Minimis* Potentially Responsible Parties is both practicable and in the public interest and accordingly, have entered into such a settlement, pursuant to CERCLA Section 9622(g), in the form set forth in Appendix A hereto ("the *De Minimis* Settlement");

EPA and/or DEP may enter into a Consent Decree, pursuant to CERCLA Section 9622(d), with certain of the Potentially Responsible Parties who are not parties to the *De Minimis* Settlement, for the performance of the remedial design and remedial action at the Site ("Potential Consent Decree").

The PRPs executing the Potential Consent Decree ("Participating PRPs") may, after the lodging of the Potential Consent Decree, contribute funds to the Trust, which funds shall be used for paying for the performance of the remedial design and remedial action ~~and may be used for the payment of government~~ response costs and natural resource damage claims and may be used for the payment of government response costs and natural resource damage claims.

2. Declaration of Purpose

The Trust is established and shall be administered by the Trustee for the purpose of funding, in whole or in part, the performance of the remedial design and remedial action at the Site pursuant to CERCLA Section 9622(g)(5) and/or CERCLA Section 9622(d) and may be used for the payment of government future EPA response costs and DEP's response costs and natural resource damage claims.

THIRD: Benefits

If the Potential Consent Decree is approved and entered by a United States District Court of competent jurisdiction on or before September 30, 1992, the Trustee is directed to pay (after such approval is so entered) from the net income and principal of this Trust, first, the total sum of Fifteen Thousand, Nine Hundred dollars (\$15,900) to the State of Maine Department of Environmental Protection, and second, such invoices and bills, in accordance with the Potential Consent Decree submitted to the Trustee in writing and approved by a majority of the total number of Participating PRPs, or, in the event the Participating PRPs have organized themselves into a PRP Group or Committee governed by a PRP Agreement or similar document, by a majority of the voting power as defined in that PRP Agreement or similar document, such approval to be made in the sole and uncontrolled discretion of the Participating PRPs and to be binding upon all parties in interest, incurred by the Participating PRPs in meeting the obligations of the Potential Consent Decree, other than obligations to pay for EPA's past response costs as defined under the Potential Consent Decree. For purposes of this Trust, distributions shall be deemed paid from contributions and the income thereon on a first-in, first-out basis as to each contribution

so that an earlier contribution and the income thereon shall be exhausted before distributions are charged to any later contribution or the income thereon. All contributions received in any fiscal year shall be treated as received on the same date for purposes of the preceding sentence.

In the event the Potential Consent Decree is not approved and entered by a United States District Court of competent jurisdiction on or before September 30, 1992, ("the Forfeiture Date") the Trustee is directed to pay, within sixty (60) days thereafter, Ninety-Four and 85/100 percent (94.85%) of the income and principal of the Trust to: U.S. Environmental Protection Agency, Hazardous Substances Superfund, P.O. Box 360197M, Pittsburgh, PA 15251 or other such post office box number or address as EPA may designate and Five and 15/100 percent (5.15%) to the State of Maine, Direction, Division of Site Investigation and Remediation Bureau of Hazardous Materials Control, Maine DEP, State House, Station 17, Augusta, ME 04333-0017. The Forfeiture Date may be extended to a later date(s) pursuant to written notice submitted by the EPA to the Trustee prior to September 30, 1992.

FOURTH: Termination

The Trustee is authorized to distribute income and/or principal as provided in Article Third hereof even if such distribution of income and/or principal would operate to terminate the Trust. This Article shall not authorize the Trustee to terminate the Trust before it terminates in accordance with the terms of Article Third hereof.

FIFTH: Trustee Management

The Trustee shall invest and reinvest the principal and income of the Trust only in Permitted Investments. For purposes hereof, "Permitted Investments" shall mean:

- (a) any obligation issued or guaranteed by the United States of America or any territory thereof, or any agency or instrumentality of the foregoing, and which has a maturity date not later than the date seven (7) years after the date of investment;
- (b) any obligation issued or guaranteed by any state or municipality in the United States, or any agency or instrumentality thereof, which is rated A (or better) by Standard & Poor's Corporation or Moody's Investor's Service, Inc. at the time of investment and which has a maturity date not later than the date seven (7) years after the date of investment;
- (c) certificates of deposit of, accounts with, repurchase obligations of, or money funds or other obligations of banks or of corporations endowed with trust powers having capital and surplus in excess of \$100,000,000;

Enclosure C

APPENDIX C

DECLARATION OF TRUST

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Dated: _____, 1991

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The EPA and DEP have notified, in writing, a number of companies, institutions and persons that they may be potentially responsible under CERCLA and State law for response costs incurred or to be incurred by EPA and DEP in connection with the investigation and cleanup of the Site ("Potentially Responsible Parties" or "PRPs").

The EPA and DEP determined that a Remedial Investigation and Feasibility Study ("RIFS") of the Site must be prepared to analyze what environmental problems exist at the Site and what measures may be necessary to address such problems.

Certain of the Potentially Responsible Parties performed that RIFS pursuant to Administrative Order by Consent, EPA Docket Number 1871104, entered into with EPA and DEP on November 4, 1987.

Based, in part, upon the contents and conclusions of the RIFS, EPA and DEP have determined that a settlement with the *De Minimis* Potentially Responsible Parties is both practicable and in the public interest and accordingly, have entered into such a settlement, pursuant to CERCLA Section 9622(g), in the form set forth in Appendix A hereto ("the *De Minimis* Settlement");

EPA and/or DEP may enter into a Consent Decree, pursuant to CERCLA Section 9622(d), with certain of the Potentially Responsible Parties who are not parties to the *De Minimis* Settlement, for the performance of the remedial design and remedial action at the Site ("Potential Consent Decree").

The PRPs executing the Potential Consent Decree ("Participating PRPs") may, after the lodging of the Potential Consent Decree, contribute funds to the Trust, which funds shall be used for paying for the performance of the remedial design and remedial action response costs and natural resource damage claims and may be used for the payment of government response costs and natural resource damage claims.

2. Declaration of Purpose

The Trust is established and shall be administered by the Trustee for the purpose of funding, in whole or in part, the performance of the remedial design and remedial action at the Site pursuant to CERCLA Section 9622(g)(5) and/or CERCLA Section 9622(d) and may be used for the payment of future EPA response costs and DEP's response costs and natural resource damage claims.

THIRD: Benefits

If the Potential Consent Decree is approved and entered by a United States District Court of competent jurisdiction on or before September 30, 1992, the Trustee is directed to pay (after such approval is so entered) from the net income and principal of this Trust, first, the total sum of Fifteen Thousand, Nine Hundred dollars (\$15,900) to the State of Maine Department of Environmental Protection, and second, such invoices and bills, in accordance with the Potential Consent Decree submitted to the Trustee in writing and approved by a majority of the total number of Participating PRPs, or, in the event the Participating PRPs have organized themselves into a PRP Group or Committee governed by a PRP Agreement or similar document, by a majority of the voting power as defined in that PRP Agreement or similar document, such approval to be made in the sole and uncontrolled discretion of the Participating PRPs and to be

binding upon all parties in interest, incurred by the Participating PRPs in meeting the obligations of the Potential Consent Decree, other than obligations to pay for EPA's past response costs as defined under the Potential Consent Decree. For purposes of this Trust, distributions shall be deemed paid from contributions and the income thereon on a first-in, first-out basis as to each contribution so that an earlier contribution and the income thereon shall be exhausted before distributions are charged to any later contribution or the income thereon. All contributions received in any fiscal year shall be treated as received on the same date for purposes of the preceding sentence.

In the event the Potential Consent Decree is not approved and entered by a United States District Court of competent jurisdiction on or before September 30, 1992, ("the Forfeiture Date") the Trustee is directed to pay, within sixty (60) days thereafter, Ninety-Four and 85/100 percent (94.85%) of the income and principal of the Trust to: U.S. Environmental Protection Agency, Hazardous Substances Superfund, P.O. Box 360197M, Pittsburgh, PA 15251 or other such post office box number or address as EPA may designate and Five and 15/100 percent (5.15%) to the State of Maine, Direction, Division of Site Investigation and Remediation Bureau of Hazardous Materials Control, Maine DEP, State House, Station 17, Augusta, ME 04333-0017. The Forfeiture Date may be extended to a later date(s) pursuant to written notice submitted by the EPA to the Trustee prior to September 30, 1992.

FOURTH: Termination

The Trustee is authorized to distribute income and/or principal as provided in Article Third hereof even if such distribution of income and/or principal would operate to terminate the Trust. This Article shall not authorize the Trustee to terminate the Trust before it terminates in accordance with the terms of Article Third hereof.

FIFTH: Trustee Management

The Trustee shall invest and reinvest the principal and income of the Trust only in Permitted Investments. For purposes hereof, "Permitted Investments" shall mean:

- (a) any obligation issued or guaranteed by the United States of America or any territory thereof, or any agency or instrumentality of the foregoing, and which has a maturity date not later than the date seven (7) years after the date of investment;

- (b) any obligation issued or guaranteed by any state or municipality in the United States, or any agency or instrumentality thereof, which is rated A (or better) by Standard & Poor's Corporation or Moody's Investor's Service, Inc. at the time of investment and which has a maturity date not later than the date seven (7) years after the date of investment;
- (c) certificates of deposit of, accounts with, repurchase obligations of, or money funds or other obligations of banks or of corporations endowed with trust powers having capital and surplus in excess of \$100,000,000;
- (d) certificates of deposit of, accounts with, or other obligations of any bank or corporation endowed with trust powers, provided that the full amount of any such certificate of deposit, account, or other obligation is insured by FDIC or FSLIC; and
- (e) commercial paper at the time of investment rated A-1+ by Standard & Poor's Corporation or P-1 by Moody's Investor's Service, Inc.

The Trustee shall keep the Trust invested in one or more accounts which shall be treated as a single fund without distinction between principal and income. In investing, reinvesting, exchanging, selling and managing the Trust, the Trustee shall discharge its duties with respect to the Trust solely in the interest of the accomplishment of the purposes and objectives of this Trust. The Trustee may engage the services of an investment adviser or manager, may rely on the advice of such adviser or manager, and may delegate investment decision-making authority to such adviser or manager with respect to management of the Trust. The Trustee shall not be personally liable for any action or inaction taken in good faith reliance on the advice of such adviser or manager, nor for delegation in good faith of investment decision-making authority to such advisor or manager.

SIXTH: Additional Powers of Trustee

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Declaration of Trust or by law, the Trustee is expressly authorized and empowered:

- (a) To invest, reinvest and administer the funds of the Trust;
- (b) To engage the services of an investment adviser or manager with respect to the management and investment of the Trust;

(c) To pay all expenses and obligations incurred by or on behalf of the Trust as authorized by this Declaration of Trust;

(d) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(e) To pay stipulated penalties to EPA and/or DEP (with respect to DEP, only in the event DEP is a signatory to the Potential Consent Decree) which may arise under the Potential Consent Decree;

(f) To pay to EPA and/or DEP (with respect to DEP, only in the event DEP is a signatory to the Potential Consent Decree) any oversight costs which may be incurred in accordance with the Potential Consent Decree; and

(g) To pay the administrative costs and expenses of the Participating PRPs in carrying out the remedial design and remedial action at the Site and to pay response costs and natural resource damage claims of the governments, in accordance with the Potential Consent Decree.

No license of court shall be required for the validity of any transaction entered into by the Trustee.

SEVENTH: Advice of Counsel

The Trustee may from time to time consult with counsel, who may be counsel to any of the Potentially Responsible Parties who are not parties to the *De Minimis* Settlement and, in the event the Potential Consent Decree is approved and entered by a United States District Court of competent jurisdiction, may be counsel to the Participating PRPs. Reasonable attorneys fees for such consultation are a proper expense of the Trust.

EIGHTH: Trustee Compensation

The Trustee shall receive compensation for its services as a Trustee under this Declaration of Trust pursuant to the Fee Statement attached hereto as Exhibit B. The Fee Statement attached hereto as Exhibit B shall be binding upon the Trustee until September 30, 1992. After September 30, 1992, any change to the Fee Statement attached hereto as Exhibit B shall become effective only upon the approval of a majority of the total number of Participating PRPs or, in the event the Participating PRPs have organized themselves into a PRP Group or Committee governed by a PRP Agreement or similar document, by a majority of the voting power as defined in that PRP Agreement or similar document.

NINTH: Trustee Expense Fund:

A separate fund shall be established hereunder ("Expense Fund") to pay for the expenses of administration of the Trust, including, but not limited to, Trustee's fees, custodial fees, legal fees, accounting fees, and tax return preparation fees, but not taxes imposed on the Trust, which shall be borne by the Expense Fund and the remaining principal and income of the Trust in proportion to the taxable income of each share. The Expense Fund shall be funded with Fifteen Thousand Dollars (\$15,000), which shall be contributed by the Participating PRPs or the PRP Group. When the Expense Fund is depleted by expenses of administration of the Trust, all remaining and future expenses of the administration of the Trust shall be paid from the then remaining principal and income of the Trust.

TENTH: Successor Trustee

Any Trustee may resign at any time by delivering his resignation, in writing, to David P. Rosenblatt, Esquire, ("Rosenblatt") Burns & Levinson, 125 Summer Street, Boston, Massachusetts 02110, or his designated successor, as defined below ("Successor Representative"). In the event the Potential Consent Decree is approved and entered by a United States District Court of competent jurisdiction and Rosenblatt or the law firm of Burns & Levinson does not represent a Participating PRP, such written notice of resignation shall be delivered by the resigning Trustee to the Successor Representative. Such designation of a Successor Representative, if necessary, will be made by Rosenblatt in writing to the Trustee within thirty days after the approval and entry of the Potential Consent Decree by a United States District Court of competent jurisdiction.

A majority of the total number of PRPs who are not parties to the *De Minimis* Settlement or, upon the approval and entry of the Potential Consent Decree by a United States District Court of competent jurisdiction, a majority of the total number of Participating PRPs or, in the event the Participating PRPs have organized themselves into a PRP Group or Committee governed by a PRP Agreement or similar document, by a majority of the voting power as defined in that PRP Agreement or similar document, may remove any Trustee, by delivering notice of such removal in writing to such Trustee, such resignation or removal to take effect upon the acceptance of appointment in writing by a successor Trustee.

Any vacancy in the office of Trustee created by resignation or removal, as defined above, shall be filled by an appointment in writing of a successor Trustee. Such successor Trustee shall be chosen by the vote of a majority of the total number of PRPs who are not parties to the *De Minimis* Settlement or, upon the approval and

entry of the Potential Consent Decree by a United States District Court of competent jurisdiction, a majority of the total number of Participating PRPs or, in the event the Participating PRPs have organized themselves into a PRP Group or Committee governed by a PRP Agreement or similar document, by a majority of the voting power as defined in that PRP Agreement or similar document.

Acceptance of appointment as a successor Trustee shall be in writing and shall be mailed to David Rosenblatt, Esquire, Burns & Levinson, 125 Summer Street, Boston, Massachusetts 02110 or the Successor Representative, as defined above. The acceptance of appointment shall become effective upon receipt of the notice of such acceptance.

Upon the acceptance of appointment of any successor Trustee, title to the Trust shall thereupon be vested in said successor Trustee without the necessity of any conveyance or instrument. Each successor Trustee shall have all of the rights, powers, duties, authority, and privileges as if initially named as a Trustee hereunder.

A copy of each instrument of resignation, removal, appointment and acceptance of appointment shall be attached to an executed counterpart of this Declaration of Trust in the custody of David P. Rosenblatt, Esquire, Burns & Levinson, 125 Summer Street, Boston, Massachusetts 02110, or the Successor Representative, if applicable, and a copy shall be furnished to the EPA Regional Administrator and the DEP Commissioner.

ELEVENTH: Immunity and Indemnification

The Trustee, whether initially named or appointed as a successor Trustee, acts as a trustee only and not personally; and in respect of any contract, obligation or liability made or incurred by the Trustee in good faith, all persons shall look solely to the Trust and not to the Trustee personally. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust. The Trustee initially named, or appointed as successor Trustee, shall be indemnified and saved harmless by the Trust from and against any personal liability by reason of any act or conduct in its official capacity, made in good faith. This indemnification and hold harmless provision shall cover all expenses reasonably incurred by such Trustee in defense of the aforementioned acts or conduct of the Trustee.

TWELFTH: Inalienability of Interests of Beneficiaries

The interest of each beneficiary in the income or principal of the Trust hereunder shall be free from the control or interference

of any creditor and shall not be subject to assignment, attachment, anticipation or alienation.

THIRTEENTH: Choice of Law

This Declaration of Trust shall be administered, construed, and enforced according to the laws of the Commonwealth of Massachusetts, except to the extent that federal law shall apply to questions arising under CERCLA or the NCP.

FOURTEENTH: Tax Treatment

It is intended that this trust be taxable as a so-called complex trust to which Internal Revenue Code of 1986, Sections 661, 662 and 663 apply and not as a partnership, corporation or grantor trust, that is, a trust whose property is deemed to be owned by one or more grantors or other persons pursuant to one or more of Internal Revenue Code of 1986, Sections 671 through 678. In the event this trust is determined, or is in the sole judgment of the Trustee at risk of being determined, to be other than a trust which is taxable as such a complex trust and it is prudent to reorganize the Trust so that it shall be such a complex trust, then the Trustee is authorized to execute such amendments to this Declaration of Trust, restatements of this Declaration of Trust, new trust declarations, instruments of assignment, plans of reorganization and other documents as are appropriate to enable the Trust or a successor to the assets of the Trust to be a trust which is taxable as such a complex trust; provided always, in no event shall the effect of any such reorganization be to change the purposes hereof, divert the assets of this Trust otherwise than for its original purposes set forth herein or enlarge the powers or responsibilities of the Trustee.

FIFTEENTH: Accounting

The Trustee shall each year render an account of its administration of the Trust to the Director of the Waste Management Division, EPA Region One ("Director"), the DEP Commissioner and the PRPs who are not parties to the *De Minimis* Settlement if such account is rendered prior to the approval and entry of the Potential Consent Decree. Said Director, DEP Commissioner's and PRPs' approval of the Trustee's account, which approval shall be deemed given if either (i) given in writing by said Director, Commissioner or PRP (as the case may be) or (ii) if such Director, Commissioner or PRP (as the case may be) does not affirmatively disapprove such account within sixty (60) days of dispatch thereof to said Director, Commissioner or PRP (as the case may be), and such deemed approval shall be a complete protection to the Trustee as to all matters and transactions stated therein or shown thereby as to such Director, Commissioner or PRP, and such approval by a majority of the total number of members of the group consisting of said Director, Commissioner and PRPs shall be a

complete protection to the Trustee as to all matters and transactions stated therein or shown thereby as to said group. Approval by a majority of the total number of members of said group shall be binding on all members of said group.

In the event the Potential Consent Decree is approved and entered by a United States District Court of competent jurisdiction, the Trustee shall thereafter render its annual account to the Participating PRPs or, in the event the Participating PRPs have organized themselves into a PRP Group or Committee governed by a PRP Agreement or similar document, to that PRP Committee or Group. Each such Participating PRP's approval of the Trustee's account, which approval shall be deemed given if given in writing by such Participating PRP or if such Participating PRP does not affirmatively disapprove such account within sixty (60) days of dispatch thereof to such Participating PRP, shall be a complete protection to the Trustee as to all matters and transactions stated therein or shown thereby as to such Participating PRP and such approval by a majority of the total number of Participating PRPs, or in the event the Participating PRPs have organized themselves into a PRP Group or Committee governed by a PRP Agreement or similar document, such approval by that PRP Committee or Group, shall be a complete protection to the Trustee as to all matters and transactions stated therein or shown thereby as to all Participating PRPs. Approval by a majority of the total number of Participating PRPs shall be binding on all Participating PRPs. Nothing herein shall be deemed to give any such Participating PRPs acting in conjunction with the Trustee the power to alter, amend, revoke, or terminate any trust hereunder.

The Trustee shall provide to the Director, the Commissioner and the PRPs, forty-five (45) days after receipt of notice from EPA of the approval of the De Minimis Settlement, a statement setting forth the total amount paid into the Trust as of that date, the identity of the contributors and the amounts paid by each contributor.

SIXTEENTH: Rule Against Perpetuities

Notwithstanding the directions given as to the payment of income and principal under the terms of this instrument, if any trust established by this instrument as a result of a contribution has not terminated with respect to such contribution and the income thereon by the expiration of twenty (20) years from the date of such contribution, then such trust shall terminate at the end of said twenty (20) year period as to such contribution and the income thereon, and the then remaining principal and undistributed income with respect to such contribution shall be paid to the EPA.

SEVENTEENTH: Interpretation

As used in this Declaration of Trust, words in the singular include the plural and words in the plural include the singular; and the masculine and neuter genders shall be deemed to include the masculine, feminine and neuter. The descriptive headings for each Section of this Declaration of Trust shall not affect the interpretation or the legal efficacy of this Declaration of Trust.

IN WITNESS WHEREOF, _____, Trustee hereunder,
has executed this instrument under seal this _____ day of
_____, 1991.

By _____, its
duly authorized officer

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, Massachusetts
_____, 1991

Then personally appeared the above-named _____,
by _____, its duly authorized officer, and
acknowledged the foregoing instrument to be its free act and
deed, before me.

Notary Public
My commission expires: _____