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**DECLARATION OF LAND USE RESTRICTIVE COVENANT  
(ENVIRONMENTAL RESTRICTION)**

**THIS DECLARATION OF LAND USE RESTRICTIVE COVENANT**, ("Declaration") is made as of the 14th day of September, 2010 by the **TOWN OF SOUTHWINGTON**, a municipality incorporated under the laws of the State of Connecticut ("Declarant").

**WHEREAS**, the Declarant is the owner of approximately 4 acres of real property located on Old Turnpike Road, in Southington, Connecticut (the "Property"), the legal descriptions of which are attached hereto as Exhibit A and made a part hereof;

**WHEREAS**, pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Property was placed on the National Priorities List to require remedial action because of a release or a substantial threat of a release of hazardous substances at or from the Property;

**WHEREAS**, on June 12, 1998, a Consent Decree, entitled "United States of America and State of Connecticut v. Town of Southington," filed in Civil Action Nos. 3:98cv8 (GLG) and 3:98cv236 (AHN), and on November 24, 2009, a Consent Decree, entitled "United States of America and State of Connecticut v. Town of Southington," filed in Civil Action No. 3:09-cv-1515, were entered in the United States District Court for the District of Connecticut (hereinafter collectively, "Consent Decrees"), copies of which are attached hereto as Exhibit B and made a part hereof;

**WHEREAS**, the Consent Decrees provide that upon request by the U.S. Environmental Protection Agency, certain restrictions shall be imposed on the use of Declarant's Property;

**WHEREAS**, the U.S. Environmental Protection Agency has requested that restrictions be imposed on the use of Declarant's Property under the Consent Decrees; and

**WHEREAS**, this Declaration covers the Declarant's Property and is being recorded with the Southington Town Clerk for the purpose of fulfilling certain requirements of the Consent Decrees and preventing interference with the performance and maintenance of any action taken pursuant to the Consent Decrees, by any party thereto.

**NOW THEREFORE**, in order to comply with the Consent Decrees, the Declarant declares that the Property shall be owned, held, transferred, sold, conveyed, used and occupied subject to the conditions, covenants and restrictions (collectively "Covenants and Restrictions") provided in this Declaration which Covenants and Restrictions shall run with the land and shall be binding on and inure to the benefit of all persons having right, title or interest in any part of the Property and to the parties to the Consent Decrees.

1. Any deed, title, or other instrument of conveyance which transfers any right, title, or interest, or

which permits any use of the Property underlying this Declaration shall contain a notice that the Property is subject to this Declaration, and any amendment or modification thereof, shall continue into perpetuity or until terminated in accordance with the provisions of this Declaration.

2. Any use of any portion of the Declarant's Property that will disturb the long-term integrity of any of the remedial measures implemented pursuant to the Consent Decrees is prohibited, except for maintenance and repair upon prior approval by the U.S. Environmental Protection Agency. Prohibited uses include activities that would harm, interfere, or compromise the landfill cap, its related systems, the hot spot containment system, the landfill gas collection system, or any other component of the remedies set forth in the Consent Decrees.
3. Any activities on any portion of the Declarant's Property that could result in exposure to contaminants in the subsurface soils and groundwater are prohibited.
4. Future residential and commercial development on the Property is prohibited. Improvements may be made to the Property to provide for passive or other recreational opportunities.
5. Use or consumption of contaminated groundwater underlying the Property is prohibited.
6. The United States (on behalf of the U.S. Environmental Protection Agency), including its contractors, the State of Connecticut, and the Performing Settling Defendants (as that term is defined in the Consent Decrees) shall have access to the Property for the purpose of conducting any activity related to the Consent Decrees.
7. The Performing Settling Defendants, the United States, and/or the State of Connecticut may enforce the restrictions set forth in this Declaration by legal action in a court of competent jurisdiction.


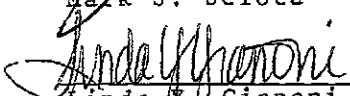
If any provision of this Declaration is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provision hereof. All such provisions shall continue unimpaired in full force and effect.

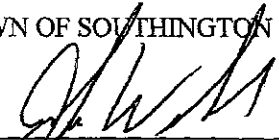
This Declaration shall not be amended, modified or terminated except by written instrument by and between the then current owner(s) of the Property and the U.S. Environmental Protection Agency. Within fifteen (15) days of executing an amendment, modification or termination of this Declaration, the owner(s) shall record such amendment, modification or termination with the Southington Town Clerk and within thirty (30) days thereafter, the owner(s) shall provide a true copy of the recorded amendment, modification or termination to the U.S. Environmental Protection Agency.

If any provision of this Declaration is also the subject of any laws or regulations established by any federal, state or local government, the stricter of the two standards shall prevail.

IN WITNESS WHEREOF, Declarant hereto has set its hand and seal the day and year first written above.

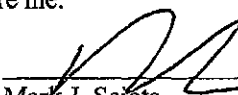
In the Presence of:

  
\_\_\_\_\_  
Mark S. Sciota  
  
\_\_\_\_\_  
Linda & Gianoni

TOWN OF SOUTHTON  
  
By: \_\_\_\_\_  
Its: Town Manager  
Duly Authorized

STATE OF CONNECTICUT            )  
  ) ss: Southington            September 14, 2010  
COUNTY OF HARTFORD            )

Personally appeared John Weichsel, Town Manager of The Town of Southington, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed and the free act and deed as such Town Manager, before me.

  
\_\_\_\_\_  
Mark J. Sciota  
Commissioner of the Superior Court

**Exhibit A**

The Declaration of Land Use Restrictive Covenant to which this exhibit is attached applies to the following properties, for which the referenced property descriptions are attached hereto:

1. Property owned by the Town of Southington and located at 435 Old Turnpike Road in Southington, Connecticut, which is more particularly described in a deed dated July 28, 1993, and recorded in Book 570, Page 869 of the Southington Land Records;
2. Property owned by the Town of Southington and located at 425 Old Turnpike Road in Southington, Connecticut, which is more particularly described in a deed dated March 29, 1993, and recorded in Book 559, Page 168 of the Southington Land Records; and
3. Property owned by the Town of Southington and located on Rejean Road in Southington, Connecticut, which is more particularly described in a deed dated February 4, 1975, and recorded in Book 266, Page 320 of the Southington Land Records.

# To all People to Whom these Presents shall Come, Greeting:

Know Ye, That Modern Age Developers, Inc., a Connecticut corporation organized and existing under the laws of the State of Connecticut and having its office and place of business in the Town of Plainville, County of Hartford and State of Connecticut

for the consideration of one or more dollars, less than \$100

received to its full satisfaction of Town of Southington, a municipal corporation chartered by and existing under the laws of the State of Connecticut, situated in the County of Hartford and State of Connecticut

do give, grant, bargain, sell and confirm unto the said Town of Southington

A certain piece or parcel of land situated on the Southerly side of a proposed road known as Rejean Road in the Town of Southington, County of Hartford, State of Connecticut and being shown and designated as open space area on a map or plan entitled:

"Final Subdivision Plan For Allan Park To Be Developed By Modern Age Developers Inc. Section Three Carter Lane & Old Tpke. Southington, Conn. Scale: 1" = 40' June, 1974 Sheet 4 of 4 Kratzert & Jones Civil Engineers - Land Surveyors - Site Planners 1457 Meriden-Waterbury Turnpike Milldale, Connecticut Revised 6/17/74"

which said map or plan is to be placed on file in the Town Clerk's office of the Town of Southington, and being more particularly bounded and described as follows:

Commencing at a point in the Southerly line of said Rejean Road marking the northeast corner of Lot #46 and the northwest corner of the property herein described, thence turning and running along a curved line marking said southerly line of Rejean Road an arc length of 151.77 to a point, thence turning and running N 87° 02' 15" E a distance of 203.00 feet to a point marking the northwest corner of Lot #45, as shown on said map or plan, thence turning and running S 02° 57' 45" E along the westerly boundry line of said Lot #45 a distance of 298.99 feet, thence turning and running N 86° 58' 31" W a distance of 60 feet, more or less to a point marking the boundry line of Black Pond, thence continuing in a northwesterly direction along the line of Black Pond, as shown on said map or plan an indeterminate distance to a point, thence turning and running S 87° 55' 05" W a distance of 30 feet, more or less to a point, thence turning and running N 77° 03' 58" W a distance of 45.04 feet to a point, thence turning and running N 09° 16' 46" E a distance of 132.35 feet to a point, thence turning and running S 65° 22' 35" E a distance of 100 feet to a point, thence turning and running N 24° 37' 25" E along the easterly boundry line of Lot #46, as shown on said map or plan, a distance of 247.89 feet, to the point and place of beginning.

Said open space area contains 3.28 acres.

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto it the said grantee its heirs, successors and assigns forever, to have and their own proper use and behoof.

And also, it the said grantor do es for itself, its successors heirs; executors and administrators, covenant with the said grantee its successors, heirs and assigns, that at and until the en sealing of these presents,

it is well seized of the premises, as a good indefeasible estate in FEE SIMPLE; and has good right to bargain and sell the same in manner and form as is above written; and that the same is free from all incumbrances whatsoever, except as hereinbefore mentioned.

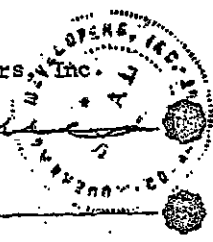
And Furthermore, it the said grantor does by these presents binds itself and its heirs, executors and administrators forever to WARRANT AND DEFEND the above granted and bargained premises to the said grantee its successors, heirs and assigns, against all claims and demands whatsoever, except as hereinbefore mentioned.

In Witness Whereof, I have hereunto set my hand and seal this 16th day of July in the year of our Lord nineteen hundred and seventy-four.

Signed, Sealed and Delivered in presence of

Richard Gilland  
Barbara Sutowski

ModernAge Developers, Inc.  
By Yvon Carrier  
Its President



State of Connecticut,  
County of Hartford

ss. Plaintiff. July 16, A. D. 1974

Personally Appeared Yvon Carrier

Signer and Sealer of the foregoing Instrument, and acknowledged the same to be his free act and deed and the free act and deed of said corporation.

before me. FEB 4 1975

Richard D. Gilland

Notary Public

Received for record at 1400 ... and recorded by me ... Town Clerk

Richard D. Gilland  
Commissioner of the Superior Court

2150

**To all People to whom these Presents shall come, Greeting:**

KNOW YE, THAT GLENN R. SLIKER, of the Town of Southington, County of Hartford and State of Connecticut

for the consideration of ONE HUNDRED EIGHTY-FIVE THOUSAND AND NO/100THS (185,000.00) DOLLARS

received to his full satisfaction of THE TOWN OF SOUTHTON, A MUNICIPAL CORPORATION LOCATED IN THE COUNTY OF HARTFORD AND STATE OF CONNECTICUT

does give, grant, bargain, sell and confirm unto the said TOWN OF SOUTHTON

A certain piece or parcel of land with any improvements thereon, located on OLD TURNPIKE ROAD, in the Town of Southington, County of Hartford and State of Connecticut, shown and designated as LOT NO. 16, on a certain map entitled: "Subdivision Plan for Daniel Mancini Carter Lane & Old Turnpike Southington, Conn. Oct. 8, 1962 Scale 1" = 100' Office of Harry E. Cole Land Surveyor" which map is recorded in the Southington Land Records as Map #248, Drawer 6, and more particularly bounded and described as follows:

- WESTERLY: by the Highway, Old Turnpike Road, 120.00 feet;
- NORTHERLY: by Lot #15, as shown on said map or plan, other land now or formerly of ModernAge Developers, Inc., 200.00 feet;
- EASTERLY: by land now or formerly of ModernAge Developers, Inc. (formerly of Daniel Mancini) 120.00 feet; and
- SOUTHERLY: by Lot #17, as shown on said map or plan, other land now or formerly of ModernAge Developers, Inc., 200.00 feet.

Said premises are subject to building lines, if established, and all provisions of any building zone ordinance enacted by the Town of Southington and any and all provisions of any ordinance, municipal regulation, or public or private law, and

1. Taxes on the Grand List of October 1, 1992 due and payable to the Town of Southington.
2. Utility Easement to Connecticut Light and Power Company dated December 21, 1973 and recorded in Volume 259 at Page 483.
3. Easement and Right of Way to the Town of Southington dated July 20, 1977 and recorded in Volume 285 at Page 297.
4. Variance by the Zoning Board of Appeals recorded October 2, 1990 in Volume 500 at Page 820.
5. Easement to the Town of Southington dated December 11, 1990 and recorded in Volume 506 at Page 143.

"No Conveyance Tax collected  
*Juanne S. DiPaolo*  
Town Clerk of Southington"

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto It the said grantee, its heirs, successors, and assigns forever, to its and their own proper use and behoof. And also, I the said grantor do for my self, my heirs, executors, administrators, and successors, covenant with the said grantee, its heirs, successors, and assigns, that at and until the ensembling of these presents, It is well seised of the premises, as a good indefeasible estate in Fee Simple; and has good right to bargain and sell the same in manner and form as is above written and that the same is free from all encumbrances whatsoever, except as hereinbefore mentioned.

And Furthermore, I the said grantor do by these presents bind myself and my heirs forever to Warrant and Defend the above granted and bargained premises to the said grantee, its heirs, successors, and assigns, against all claims and demands whatsoever, except as hereinbefore mentioned.

IN WITNESS WHEREOF, the undersigned,

has hereunto set his hand this 26th day of March 1993

Signed and Delivered in the presence of (Type or Print name below each signature.)

WITNESS: *[Signature]*  
Robert S. STANEK  
*[Signature]*  
Carol L. Lear

GRANTOR: *[Signature]*  
GLENN R. SLIKER

STATE OF CONNECTICUT,  
COUNTY OF HARTFORD

ss. Southington March 26, 1993

Personally Appeared Glenn R. Sliker  
Signer(s) of the foregoing Instrument, and acknowledged the same to be his  
free act and deed, before me.

*[Signature]*  
Notary Public / J. of Peace / Commissioner of Superior Court  
Robert S. STANEK

STATE OF CONNECTICUT,  
COUNTY OF

ss. 19

Personally Appeared  
acknowledged the same to be  
, as aforesaid, Signer of the foregoing Instrument, and  
free act and deed as such  
and the free act and deed of said corporation/partnership, before me.

Grantees' Address:

. A25. Old Turnpike Road

Notary Public / J. of Peace / Commissioner of Superior Court

MAR 29 1993 11:21 AM



**To all People to whom these Presents shall come, Greeting:**

6650

KNOW YE, THAT, WILLIAM J. PALLATTO AND SUSAN L. PALLATTO, both of the Town of Southington, County of Hartford and State of Connecticut

for the consideration of ONE HUNDRED SIXTY THOUSAND AND NO/100ths (\$160,000.00) DOLLARS

received to their full satisfaction of THE TOWN OF SOUTHLINGTON, a municipal corporation, located in the County of Hartford and State of Connecticut

do give, grant, bargain, sell and confirm unto the said TOWN OF SOUTHLINGTON

SEE ATTACHED SCHEDULE A

"No Conveyance Tax collected

*Juanne J. DePasta*

Town Clerk of Southington"

## SCHEDULE A

all that certain piece or parcel of land with all buildings and improvements thereon, situated on the easterly side of OLD TURNPIKE, in the Town of Southington, County of Hartford and State of Connecticut, and being:--

Lot No. 17 on a certain Map entitled, "Subdivision Plan for Daniel Mancini Carter Lane & Old Turnpike Southington, Conn. Oct. 8, 1962 Scale 1" = 100' Office of Harry E. Cole Land Surveyor", which Map is on file in the Southington Town Clerk's Office and being more particularly bounded and described as follows, to wit:

NORTHERLY	by Lot No. 16, as shown on said Map, two hundred (200) feet;
EASTERLY	by land now or formerly of Daniel Mancini, as shown on said Map, one hundred forty (140) feet, more or less;
SOUTHERLY	by land now or formerly of the Town of Southington, as shown on said Map, two hundred thirty-eight (238) feet, more or less; and
WESTERLY	by the highway, OLD TURNPIKE, as shown on said Map, one hundred sixty-six and thirteen one-hundredths (166.13) feet.

Excepting therefrom all that certain piece or parcel of land conveyed to the Town of Southington by virtue of a Warranty Deed dated January 30, 1991 and recorded March 6, 1991 in Volume 506 at Page 956.

Said premises are subject to building lines, if established, and all provisions of any building zone ordinance enacted by the Town of Southington, and any and all provisions of any ordinance, municipal regulation, or public or private law, and

1. Taxes on the Grand List of October 1, 1992, payable to the Town of Southington.
2. Utility easement to the Connecticut Light and Power Company, dated December 21, 1973 and recorded January 2, 1974 in Volume 259 at Page 483.
3. Easement and right of way to the Town of Southington dated July 20, 1977 and recorded July 20, 1977 in Volume 285 at Page 297.
4. Variance by the Town of Southington recorded October 2, 1990 in Volume 500 at Page 821.
5. Easement to the Town of Southington dated January 30, 1991 and recorded March 6, 1991 in Volume 506 at Page 957.

VOL. 570 PAGE 871

To Have and to Hold the above granted and bargained premises, with the appurtenances thereof, unto It the said grantee, its heirs, successors, and assigns forever, to it and their own proper use and behoof. And also, we the said grantor, do for our selves, our heirs, executors, administrators, and successors, covenant with the said grantee, its heirs, successors, and assigns, that at and until the ensembling of these presents, we are well seised of the premises, as a good indefeasible estate in Fee Simple; and have good right to bargain and sell the same in manner and form as is above written and that the same is free from all encumbrances whatsoever, except as hereinbefore mentioned.

And Furthermore, we the said grantor, do by these presents bind our selves and our heirs forever to Warrant and Defend the above granted and bargained premises to the said grantee, its heirs, successors, and assigns, against all claims and demands whatsoever, except as hereinbefore mentioned.

IN WITNESS WHEREOF, the undersigned,

have hereunto set their hand this 27th day of July 19 93.

Signed and Delivered in the presence of (Type or Print name below each signature.)

WITNESS:

GRANTOR:

.....  
A. T. Colby  
ANTHONY ROFASO  
.....  
Mark Solovis

.....  
William J. Pallatto  
Susan L. Pallatto

STATE OF CONNECTICUT, }  
COUNTY OF HARTFORD } ss. Southington July 27 19 93

Personally Appeared William J. Pallatto and Susan L. Pallatto, Signer(s) of the foregoing Instrument, and acknowledged the same to be their free act and deed, before me.

.....  
ANTHONY ROFASO  
~~Notary Public / Commissioner of Superior Court~~  
ANTHONY ROFASO

STATE OF CONNECTICUT, }  
COUNTY OF } ss. 19

Personally Appeared \_\_\_\_\_, as aforesaid, Signer of the foregoing Instrument, and acknowledged the same to be \_\_\_\_\_ free act and deed as such and the free act and deed of said corporation/partnership, before me.

Grantees' Address:

.....  
Notary Public / J. of Peace / Commissioner of Superior Court

Exhibit B

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA  
and STATE OF CONNECTICUT

Plaintiffs,

v.

TOWN OF SOUTHWINGTON, ET AL.,

Defendants.

CIVIL ACTION

Nos. 3:98cv8 (GLG)

and 3:98cv236 (AHN)

Old Southington  
10.8  
252356



SDMS DocID 252356

CONSENT DECREE

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## I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Old Southington Landfill Superfund Site in Southington, Connecticut ("Site"), together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Connecticut (the "State") on or about June 8, 1995 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State has also filed a complaint against the defendants and the United States in this Court alleging that the defendants and the Settling Federal Agencies, as defined in this Consent Decree, are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and Conn. Gen. Stats. §§ 22a-451 for recovery of the response costs incurred by the State and for the recovery of the costs and expenses incurred by the State in investigating, containing, removing, monitoring or mitigating pollution and contamination allegedly caused by the defendants.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Natural Resource Trustees for the State, the National Oceanic and Atmospheric Administration, and the United States Fish & Wildlife Service on April 11, 1997 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The Settling Defendants, as defined in this Consent Decree, do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants or any claim by the State.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37,083.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, the Town of Southington ("Town"), United Technologies Corp., Pratt & Whitney Division ("UTC"), and Solvents Recovery Service of New England ("SRSNE"), under EPA oversight, commenced on September 29, 1987, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430. SRSNE later became insolvent and suspended participation in the RI/FS. In 1989, General Electric Company agreed to participate in the performance of the RI/FS.

I. The RI/FS Report was completed on December 10, 1993. EPA issued an addendum to the RI/FS Report on May 23, 1994.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the RI/FS and of the proposed plan for remedial action on May 23, 1994, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a Record of Decision ("ROD"), executed on September 22, 1994, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. On or about November 25, 1995, the United States, the State, and the majority of the Settling Defendants ("ADR Parties") entered into an Alternative Dispute Resolution Agreement ("ADR Agreement") regarding the Site. The ADR Agreement provided for an allocation process pursuant to which neutral allocators would assign shares of responsibility to various parties based on their connection with the Site. The allocation process was an EPA pilot program and was described in an appendix to the ADR Agreement. In connection with the pilot program, EPA stated its intention to fund a portion of the remedial costs, generally described as the aggregate of: (1) the costs attributable to identified parties which are insolvent or defunct, (2) a portion of the costs attributable to parties with a limited ability to pay all of their allocated response costs, and (3) a portion of the costs attributable to the presence of municipal solid waste at the Site.

M. On September 3, 1996, the United States and the ADR Parties entered into an Allocation Settlement Agreement for the Site which set forth shares for each ADR Party for costs associated with implementation of the remedial action required by the ROD, the United States' past costs, EPA's future oversight costs associated with the ROD, and past costs incurred by some of the private parties. Subsequently, the Settling Federal Agencies also entered into the Allocation Settlement Agreement. Pursuant to the Allocation Settlement Agreement, the United States has agreed to not to seek reimbursement for certain costs. Pursuant to the Allocation Settlement Agreement, the Town and UTC have agreed to perform the Remedial Design/Remedial Action set forth in the ROD.

N. 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 Performing Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

O. 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 Performing Settling Defendants shall constitute a response action taken or ordered by the President.

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

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants with respect to the complaints filed in this matter and this Consent Decree only. Solely for the purposes of this Consent Decree and the underlying complaints, 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, on behalf of EPA and the Settling Federal Agencies, and the State and upon Settling Defendants and their heirs, 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. Performing Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Performing Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Performing 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. Performing 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 Performing 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:

"Ability to Pay Parties or "ATP Parties" shall mean the following Contributing Settling Defendants: American Standard Company, Bruce Manufacturing and Molding Company, Inc., Clark Brothers Bolt Company, Inc., the Estate of Carleton H. Boll, The Five Star Company, GMT Manufacturing Company, Inc., Lake Eyelet Manufacturing Company, Inc., M. Swift and Sons Company, Nelson Tool and Machine and Solvents Recovery Service of New England, Inc.

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

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



"Commercial Properties" shall mean the properties in Southington, Connecticut located at: (a) 503 and 579 Old Turnpike Road; (b) 477 Old Turnpike Road; and (c) 455 Old Turnpike Road and owned by the Owner Settling Defendants.

"Contributing Settling Defendants" shall mean the Settling Defendants listed in Appendix C.

"CDEP" shall mean the Connecticut Department of Environmental Protection and any successor departments or agencies of the State.

"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 mean the effective date of this Consent Decree as provided by Paragraph 136.

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

"Future Response Costs" shall mean all direct and indirect costs that the United States and the State incur and pay: (a) pursuant to Paragraphs 31, 55, 74 or 113 and Subparagraph 18.b; (b) in seeking to enforce a provision of this Consent Decree, together with any accrued Interest; and (c) all costs incurred in connection with the relocation of Residential Owners to the extent such costs exceed \$400,000. Future Response Costs shall not include Groundwater Remedy Costs.

"GE" shall mean General Electric Company.

"Groundwater Remedy" shall mean the response action(s) selected in future record(s) of decision or action memorandum(a) regarding the groundwater at or migrating from the Site. The Groundwater Remedy shall not include the Work.

"Groundwater Remedy Costs" shall mean any costs that the United States, the State or any private party incurs or pays in connection with the Groundwater Remedy. Groundwater Remedy Costs shall not include any costs incurred in performing the Work.

"Interest," shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"Lash Property" shall mean the property located at 497 Old Turnpike Road, Rear, Southington, Connecticut and owned by Lash Realty Trust.

"Matters Addressed in this Consent Decree" or "Matters Addressed" shall mean Past Response Costs, Private Party Past Costs, and all costs relating to the ROD to be incurred by the United States, the State or any private party. "Matters Addressed" does not include those response costs or response actions as to which the United States or the State has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States or the State asserts rights against Settling Defendants coming within the scope of such reservations.

"Memorandum of Understanding" or "MOU" shall mean the agreement entered into between the Performing Settling Defendants, EPA and certain Owner Settling Defendants for acquisition of the Commercial Properties and for the relocation of the businesses located on the Commercial Properties. The MOU is attached as Appendix F.

"Meriden Property" shall mean the property located at 497 Old Turnpike Road, Southington, Connecticut and owned by Meriden Box Company.

"Municipal Solid Waste" shall mean all waste materials generated by households, including single and multi-family residences, and hotels and motels. The term also includes waste materials generated by commercial, institutional, and industrial sources, to the extent such wastes (A) are essentially the same as waste normally generated by households, or (B) are collected and disposed of with other municipal solid waste or sewage sludge as part of normal municipal solid waste collection services and, regardless of when generated, would be considered conditionally exempt small quantity generator waste under regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act, 42 U.S.C. § 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste. The term does not include combustion ash generated by resource recovery facilities or municipal incinerators, or waste from manufacturing or processing (including pollution control) operations not essentially the same as waste normally generated by households.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Natural Resources" shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

"NOAA" shall mean the National Oceanic and Atmospheric Administration, and any successor departments, agencies, or instrumentalities thereof.

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

"Owner Settling Defendants" shall mean Harold L. Charette, Pike Realty, Inc., Richard Vaillancourt, Lash Realty Trust, Albert L. Lash, Jr., Nancy J. Lash and Robert A. Lash.

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

"Parties" shall mean the United States, the State of Connecticut, the Settling Defendants, and the Settling Federal Agencies.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States or the State incurred or paid at or in connection with the Site through the Effective Date, 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 XII.A of the ROD and Section IV of the SOW.

"Performing Settling Defendants" shall mean the Town and UTC.

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

"Private Party Past Costs" shall mean all direct and indirect costs that any private party incurred or paid at or in connection with the Site as of the Effective Date, except for any costs or damages associated with private party lawsuits.

"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 for the Interim Remedial Action at the Site signed on September 22, 1994, by the Regional Administrator, EPA Region I - New England or his delegate, and all attachments and any amendments to the ROD. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, 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.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraphs 12.d and 13 and approved by EPA, and any amendments thereto.

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

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 12 and approved by EPA, and any amendments thereto.

"Residential Owners" shall mean Morrill and Laurie Barnes and Mark and Nancy Simone.

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

"Settling Defendants" shall mean the Owner Settling Defendants, the Performing Settling Defendants and the Contributing Settling Defendants.

"Settling Federal Agencies" shall mean the United States Department of Defense and the United States General Services Administration and their predecessor, component and successor agencies.

"Sewage Sludge" means solid, semisolid, or liquid residue removed during the treatment of municipal waste water, domestic sewage, or other waste water at or by publicly owned or federally owned treatment works.

"Site" shall mean the Old Southington Landfill Superfund Site, encompassing approximately 11 acres, located along Old Turnpike Road in Southington, Hartford County, Connecticut and depicted generally on the map attached as Appendix E.

"State" shall mean the State of Connecticut, including all of its departments, agencies, and instrumentalities.

"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 Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Subparagraph" shall mean a portion of this Consent Decree identified by a lower case letter.

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

"Town" shall mean the Town of Southington, Connecticut.

"Trust Fund" shall mean the trust fund established by the Performing Settling Defendants pursuant to Section XVI.

"United States" shall mean the United States of America, including all of its departments, agencies, and instrumentalities.

"UTC" shall mean United Technologies Corp., Pratt & Whitney Division.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under Sections 22a-449(c)-100 through 22a-449(c)-110 and Section 22a-449(c)-11 of the Regulations of Connecticut State Agencies and Conn. Gen. Stat. § 22a-115.

"Work" shall mean all activities Performing Settling Defendants are required to perform under this Consent Decree, except those required by Section XXVI (Retention of Records).

#### V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Performing Settling Defendants, to resolve the United States' and the State's claims against Settling Defendants for Past and Future Response Costs, to resolve claims against Settling Defendants for past and certain future response costs incurred by private parties, and to resolve claims against the Settling Federal Agencies for certain past and future response costs by the State and private parties.

6. Commitments by Settling Defendants and Settling Federal Agencies

a. Performing Settling Defendants shall finance and perform the Work 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 Performing Settling Defendants and approved by EPA pursuant to this Consent Decree. Contributing Settling Defendants and the Settling Federal Agencies shall pay the settlement amounts specified in Appendix D, which funds shall be used to partially fund the Work, to pay a portion of the United States' enforcement costs, and to resolve the Plaintiff's and private parties' claims for past and certain future response costs, in accordance with the terms of this Consent Decree.

b. The obligations of the Performing Settling Defendants to perform the Work under this Consent Decree are joint and several. In the event of the insolvency or other failure of one Performing Settling Defendant to implement the requirements of this Consent Decree, the remaining Performing Settling Defendant shall complete all such requirements.

7. Compliance With Applicable Law. All activities undertaken by Settling Defendants and Settling Federal Agencies pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Performing 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.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. For purposes of this Paragraph, "on-site" means within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Performing Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Performing Settling Defendants may seek relief under the provisions of Section XIX (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work provided that they made a timely and complete application pursuant to Paragraph 78.

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. Upon request by EPA, with respect to any property owned or controlled by a Settling Defendant(s) that is located within the Site, within 15 days after the Effective Date, such Settling Defendant(s) shall submit to EPA for review and approval a notice to be filed with the Southington Town Clerk and recorded on the land records of the Town of Southington, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on September 22, 1994, 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. Such Settling Defendant(s) shall record the notice(s) within 10 days of EPA's approval of the notice(s). Such Settling Defendant(s) shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s). The Owner Settling Defendants shall not be required to file a notice to the extent that the property will be transferred to EPA, the State or the Town.

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Defendant(s) conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access

easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Settling Defendant(s) conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance by a Settling Defendant, that 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 and Institutional Controls), shall continue to be met by such Settling Defendant(s). In no event shall the conveyance release or otherwise affect the liability of such Settling Defendant(s) to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

d. The Owner Settling Defendants that have signed the MOU shall not transfer the Commercial Properties except in accordance with the MOU.

#### VI. PERFORMANCE OF THE WORK

10. The Performing Settling Defendants shall perform the Work in accordance with the Consent Decree, the ROD, the SOW, all modifications to the SOW, and all design specifications, Work Plans or other plans or schedules attached to or approved pursuant to the SOW. The Work includes, but is not limited to: acquisition of properties located on the Site, relocation of affected businesses, removal of all residential and commercial structures from the landfill, excavation and consolidation of discrete semi-solid materials in the landfill into a lined cell on Site, installation and O&M of a cap, installation and O&M of a landfill gas collection system, long-term monitoring for groundwater, landfill gas, surface water and sediment, five year reviews, supplemental groundwater studies, such institutional controls as are necessary for implementation of the Remedial Action and the meeting of the Performance Standards.

11. Selection of Supervising Contractor. All aspects of the Work to be performed by Performing Settling Defendants pursuant to Sections VI (Performance of the Work), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) 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 the State. Within 10 days after the signature of the EPA Regional Administrator on this Consent Decree, Performing Settling Defendants shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Performing Settling Defendants propose to change a Supervising Contractor, Performing Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

12. Remedial Design.

a. In order to expedite Remedial Design at the Site, Performing Settling Defendants will commence performance of Remedial Design activities required under this Paragraph and the Bedrock Groundwater Investigation Work Plan referred to in Attachment A of the SOW upon the lodging of the Consent Decree, and shall perform such Remedial Design activities up to and including the submission of the deliverables listed in Section IX of the SOW, paragraphs A and B. However, if the United States withdraws from this Consent Decree pursuant to Section XXXIII (Lodging and Opportunity for Public Comment) or the Court denies entry of the Consent Decree before completion of the Remedial Design activities, the Performing Settling Defendants may suspend performance of Remedial Design activities as of: (i) the date the United States notifies Performing Settling Defendants that the United States has withdrawn from the Consent Decree, or (ii) the date of denial of entry by the Court. Upon the Effective Date, this Consent Decree shall govern the continued performance of the Work by the Performing Settling Defendants, and all ongoing obligations existing from the date of lodging will continue without interruption and shall be enforceable obligations under this Consent Decree.

b. In accordance with the SOW, the Performing Settling Defendants shall submit to EPA and the State a Predesign Work Plan and Project Operations Plan for the Remedial Action at the Site. The Predesign Work Plan shall describe all tasks and investigations which must be undertaken prior to the Remedial Design to facilitate the Remedial Design and ensure effectiveness of the Remedial Action. Upon its approval by EPA, and after a reasonable opportunity for review and comment by the State, the Predesign Work Plan and Project Operations Plan shall be incorporated into and become enforceable under this Consent Decree. Performing Settling Defendants shall submit to EPA and the State a Predesign Report and Project Operations Plan as set forth in the SOW.

c. In accordance with the SOW, Performing Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW, and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. In accordance with the SOW, the Performing Settling Defendants shall submit to EPA and the State a revised Project Operations Plan, including a Health and Safety Plan for field design activities 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. In accordance with the SOW, upon approval of the Remedial Design Work Plan and revised Project Operation Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Performing Settling Defendants shall implement the Remedial Design Work Plan. The Performing Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design 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, Performing Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

13. Remedial Action.

a. In accordance with the SOW, Performing Settling Defendants shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Performing Settling Defendants shall submit to EPA and the State a revised Project Operation Plan, including a Health and Safety Plan for field activities required by the 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. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Performing Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Performing Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action 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, Performing Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

c. The Town shall have responsibility for completing the following O&M activities as set out in the ROD: quarterly reporting, maintenance of the fence/barrier, mowing of cap and maintenance of vegetation; and inspection and maintenance of cap, including any health and safety costs and other contingencies associated with such activities. Costs incurred in performing these activities shall not be reimbursed by the Trust Fund or by the Hazardous Substances Superfund.

14. The Performing Settling Defendants shall continue to implement the Remedial Action and the Work until the Performance Standards are achieved and until such time as the Certificates of Completion are issued for the Remedial Action and the Work, respectively, in accordance with Paragraphs 53 and 54.

15. Modification of the SOW or Related Work Plans.

a. If EPA, after reasonable opportunity for review and comment by the State, determines that modification to the work specified in the SOW and/or in 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; and further provided that the Performing Settling Defendants shall in no event be required to implement response actions in bedrock above and beyond the limited bedrock aquifer investigation as described in Section 4(IV) of Attachment A of the SOW.



b. For the purposes of this Paragraph and Paragraphs 53 and 54 only, the "scope of the remedy selected in the ROD", includes, but may not be limited to: acquisition of properties necessary for the implementation of the Remedial Action, relocation of residents located on those properties, relocation of businesses as necessary for the implementation of the Remedial Action, removal of all residential and commercial structures from the landfill, excavation and consolidation of discrete semi-solid materials in the landfill into a lined cell on Site, installation and O&M of a cap, installation and O&M of a landfill gas collection system, long-term monitoring for groundwater, landfill gas, surface water and sediment, five year reviews, supplemental groundwater studies, implementation of such institutional controls as are determined by EPA to be necessary for implementation of the Remedial Action, and the meeting of the Performance Standards.

c. If Performing Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Paragraph 85. The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Performing Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Except as provided in Subparagraph 15.a, 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.

16. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or 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.

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

a. The 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. The 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 the Performing Settling Defendants following the award of the contract for Remedial Action construction. The Performing Settling Defendants shall provide the information required by Paragraph 17.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

18. Relocation.

a. Acquisition of the Commercial Properties and relocation of the businesses located thereon shall be conducted in accordance with the MOU. The Performing Settling Defendants shall use best efforts to acquire ownership of those portions of the Meriden Property necessary to complete the Work and secure access for Meriden Box Company for the remainder of the Meriden Property.

b. For purposes of Subparagraph 18.a, "best efforts" includes the payment of reasonable sums of money consistent with fair market value. If Performing Settling Defendants are unable to obtain ownership of the portions of the Meriden Property specified in Subparagraph 18.a, Performing Settling Defendants shall 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 Subparagraph 18.a. The United States may, as it deems appropriate, assist Performing Settling Defendants in complying with Subparagraph 18.a. Performing Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Payment of Response Costs), for costs incurred by the United States in assisting the Performing Settling Defendants in complying with Subparagraph 18.a, including, but not limited to, the cost of attorney time and the amount of any monetary consideration paid.

19. The Performing Settling Defendants' obligations to comply with this Consent Decree are joint and several. The failure by one Performing Settling Defendant to perform its obligations under this Consent Decree shall not excuse or limit the other Performing Settling Defendant's obligations under this Consent Decree.

VII. REMEDY REVIEW

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

21. 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 Site in accordance with the requirements of CERCLA and the NCP.

22. Opportunity To Comment. Performing 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.

23. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Performing Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraphs 106 or 107 are satisfied. Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraphs 106 or 107 are satisfied, (2) the State's determination that the reopener conditions of Paragraphs 108 or 109 are satisfied, (3) EPA's determination that the Remedial Action is not protective of human health and the environment, (4) the State's determination that the Remedial Action does not fully protect health, public welfare and the

environment, or does not abate the cause of the pollution to the waters of the State or the maintenance of a discharge of treated or untreated wastes to the waters of the State, or (5) EPA's selection of the further response actions. Disputes pertaining to the whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 85.

24. Submissions of Plans. If Performing Settling Defendants are required to perform the further response actions pursuant to Paragraph 23, they shall submit a plan for such work: to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

#### VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

25. Performing Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and 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 Performing 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 shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. 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 shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Performing Settling Defendants in implementing this Consent Decree. In addition, Performing Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Performing Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. 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 shall ensure that all laboratories they use for analysis of samples pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Performing Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

26. Upon request, the Performing Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Performing Settling Defendants 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 EPA or the State deem necessary. Upon request, EPA and the State shall allow the Performing Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Performing Settling Defendants' implementation of the Work.

27. Performing Settling Defendants shall submit to EPA and the State a total of eight copies 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 Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

28. 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 AND INSTITUTIONAL CONTROLS**

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

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

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Implementing the Work pursuant to the conditions set forth in Paragraph 113.
- (7) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXV (Access to Information);
- (8) Assessing Settling Defendants' compliance with this Consent Decree; and
- (9) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, the following:

- (1) Ground water underlying the property shall not be consumed, or used in any way except for the limited purpose of treating and monitoring ground

water contamination levels. Ground water wells and facilities installed for such purpose shall only be installed pursuant to a plan approved by EPA.

(2) There shall be no disturbance of the surface or subsurface of the landfill cap by drilling, excavation, removal of topsoil, rock or minerals.

(3) No use or activity on the landfill cap and the areas necessary for landfill cap installation and O&M shall be permitted that will disturb any of the remedial measures that will be implemented pursuant to this Consent Decree, except for maintenance and landfill repair with prior EPA approval.

c. If EPA so requests, execute and record with the Southington Town Clerk on the land records of the Town of Southington, an easement and environmental land use restriction, running with the land, that (i) grant a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 29.a, and (ii) grant the right to enforce the land/water use restrictions listed in Paragraph 29.b, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Performing Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

(1) A draft easement and environmental land use restriction, pursuant to Conn. Gen. Stat. § 22a-133o and RCSA § 22a-133g-l that are enforceable under the laws of the State of Connecticut, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) a current title commitment or report prepared in accordance with the U.S. Department of Justice *Standards for the Preparation of Title Evidence in Land Acquisitions by the United States* (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement and environmental land use restriction, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Southington Town Clerk on the land records of the Town of Southington. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement and environmental land use restriction showing the clerk's recording stamps.

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

a. to secure from such persons 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 29.a;

b. to secure from such persons an agreement, enforceable by the Performing Settling Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 29.b, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. if EPA so requests, to either: (i) secure enforceable federal, state or municipal laws or regulations or other governmental controls to implement the remedy selected in the ROD or to ensure the integrity and protectiveness of the remedial measures to be performed pursuant to this Consent Decree, or (ii) secure from such persons the execution and recordation, in the land records of the Town of Southington, of an easement and environmental land use restriction, running with the land, that: (a) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 29.a, and (b) grants the right to enforce the land/water use restrictions listed in Paragraph 29.b or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted, as directed by EPA, to any of the following: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Performing Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of EPA's request, Performing Settling Defendants shall submit to EPA for review and approval with respect to such property:

(1) A draft easement and environmental land use restriction, pursuant to Conn. Gen. Stat. § 22a-133o and RCSA § 22a-133g-1 that are enforceable under the laws of the State of Connecticut, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(2) a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, Performing Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Southington Town Clerk on the land records of the Town of Southington. Within 30 days of the recording of the easement and environmental land use restriction, Performing Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

31. For purposes of Paragraph 30, "best efforts" includes the payment of reasonable sums of money consistent with fair market value, in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. If any access or land/water use restriction agreements required by Paragraphs 30.a or 30.b are not obtained within 45 days of EPA's request, or any access easements or restrictive easements required by Paragraph 30.c 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 Paragraph 30. 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 (Payment of Response Costs), for all costs incurred 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.

32. 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, Performing Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls and to implement such controls.

33. 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

34. In addition to any other requirement of this Consent Decree, Performing Settling Defendants shall submit to EPA and the State a total of eight copies of written monthly progress reports in accordance with the SOW that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Performing Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month 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 month. Performing Settling Defendants shall submit these progress reports to EPA and the State by the first day of each month following the lodging of this Consent Decree until EPA notifies the Performing Settling Defendants pursuant to Paragraph 54.b. 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.

35. The Performing Settling Defendants shall notify EPA of any change in the schedule described in the weekly 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.

36. 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 nor the Alternate EPA Project Coordinator is available, the Emergency Response Section, Region I - New England, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

37. Within 20 days of the onset of such an event, Performing Settling Defendants shall furnish to Plaintiffs a written report, signed by the 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.

38. Performing Settling Defendants shall submit at least eight copies, unless otherwise requested by EPA on a document-specific basis, of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Performing Settling Defendants shall simultaneously submit two copies of all such plans, reports and data to the State.

39. All reports and other documents submitted by Performing Settling Defendants to EPA (other than the weekly 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 the Performing Settling Defendants.

#### XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

40. 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 Performing Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Performing Settling Defendants at least one notice of deficiency and an opportunity to cure within 21 days, 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.

41. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 40(a), (b), or (c), Performing 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 XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 40(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XXI (Stipulated Penalties).

42. a. Upon receipt of a notice of disapproval pursuant to Paragraph 40(d), Performing Settling Defendants 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 XXI, 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 43 and 44.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 40.d, Performing 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 Performing Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

43. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Performing 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. Performing 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 XX (Dispute Resolution).

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

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

## XII. PROJECT COORDINATORS

46. Within 20 days of lodging this Consent Decree, Performing Settling Defendants, the State, 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 five working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Performing Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The 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 Site representative for oversight of performance of daily operations during remedial activities.

47. 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 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.

48. In accordance with the SOW, EPA's Project Coordinator and the Performing Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis during construction, and more frequently if so requested by EPA. Meetings may be in person or by telephone.

### XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

49. Within 30 days of the Effective Date, Performing Settling Defendants shall establish and maintain financial security in the amount of \$10,000,000 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 Performing Settling Defendants; or
- e. A demonstration that one or more of the Performing Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).
- f. Evidence as provided by the Town's referendum for its share of the Remedial Action.

50. If the Performing Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 49.d, 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 49.d or 49.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. 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 49. Performing Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

51. If Performing Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 49 after entry of this Consent Decree, Performing Settling Defendants may, on any anniversary of the Effective

Date, or at any other time agreed to by the Performing Settling Defendants and 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, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Performing Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

52. 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

##### 53. Completion of the Remedial Action

a. Within 30 days after Performing Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Performing Settling Defendants shall schedule and conduct a final construction inspection to be attended by Performing Settling Defendants, EPA, and the State. If, after the final construction inspection, the Performing Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 30 days of the inspection. In the report, a registered professional engineer and the Performing Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer and all information specified in the SOW. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or the 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 final construction inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Performing Settling Defendants in writing of the activities that must be undertaken by Performing Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards; 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 Subparagraph 15.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 the 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 XX (Dispute Resolution).

b. If EPA concludes, based on the final construction inspection and the subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Performing Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Performing Settling Defendants' obligations under this Consent Decree.

54. Completion of the Work

a. Within 90 days after Performing Settling Defendants conclude that all phases of the Work, including O&M, have been fully performed, Performing Settling Defendants shall schedule and conduct a final O&M inspection to be attended by Performing Settling Defendants, EPA and the State. If, after the final O&M inspection, the Performing Settling Defendants still believe that the Work has been fully performed, Performing Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Performing Settling Defendant or the 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 final O&M inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work 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; 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 Subparagraph 15.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 the 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 XX (Dispute Resolution).

b. If EPA concludes, based on the final O&M inspection and the 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 has been performed in accordance with this Consent Decree, EPA will so notify the Performing Settling Defendants in writing.

#### XV. EMERGENCY RESPONSE

55. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Performing Settling Defendants shall, subject to Paragraph 56, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Performing Settling Defendants shall notify the EPA Emergency Response Unit, Region I - New England. Performing Settling Defendants also shall notify the State's Project Coordinator. 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 take such action instead, Performing Settling Defendants shall reimburse the United States and the State, as Future Response Costs, all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payment of Response Costs).

56. 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 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 Site, subject to Section XXII (Covenants by Plaintiffs).

#### XVI. PAYMENT OF RESPONSE COSTS

57. By December 10, 1997, Performing Settling Defendants shall establish a trust fund ("Trust Fund") with a trustee ("Trustee") pursuant to a trust agreement that has been approved by EPA ("Trust Agreement").

58. Except as provided in the following two sentences, each Contributing Settling Defendant shall, by December 23, 1997, pay the amount specified for that Contributing Settling Defendant in Appendix D. The Contributing Settling Defendants listed in Appendix H shall, by January 23, 1998, jointly pay the amount specified for the "SRSNE Customer Group" in Appendix D. Solvents Recovery Service of New England, Inc. ("SRSNE") and the Estate of Carleton Boll ("Estate") shall: (1) by April 1, 1998, pay an additional amount of \$45,000; and (2) exercise reasonable efforts to secure a settlement with, or pursue a judgment against Lloyds of London with respect to insurance coverage for environmental and/or property damage, and shall, within 30 days of receipt of payment from Lloyds of London, pay 90% of the net proceeds of such settlement or judgment. Each payment under this Paragraph: (a) shall be made by check or money order made payable to "OSL Site Trust" and shall be sent to the Trustee for the Trust Fund in accordance with Paragraph 135; or (b) shall be made by wire transfer to the Trustee for the Trust Fund in accordance with instructions provided by the Trustee. A cover letter shall be sent with the check or money order or simultaneously with the wire transfer. The cover letter shall reference the name and address of the Contributing Settling Defendant making payment, the amount of and method of payment, EPA Region and

Site/Spill ID No. 01-58, and DOJ Case No. 90-11-2-420A and shall be sent to the Trustee for the Trust Fund, the United States and EPA in accordance with Paragraph 135.

59. As soon as reasonably practicable after the Effective Date, the United States, on behalf of the Settling Federal Agencies, shall cause \$5,157 to be paid to the Trust Fund and \$1,731,412 to be paid to UTC. The payment to UTC shall be made by check made payable to "United Technologies Corporation" and shall be sent to UTC in accordance with Paragraph 135. The payment to the Trust Fund shall be made by check made payable to the "OSL Site Trust" and shall be sent to the Trustee for the Trust Fund in accordance with Paragraph 135.

60. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that the Settling Federal Agencies obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

61. In the event that payments by the Settling Federal Agencies required by Paragraph 59 are not made within 60 days of the Effective Date, interest on the unpaid balance shall be paid commencing on the 61st day after the Effective Date and accruing through the date of the payment.

62. Monies deposited into the Trust Fund shall be used solely to make the refunds and disbursements described in this Section, and the expenses of administering the Trust Fund.

63. EPA, through its approval of the terms and conditions of the Trust Agreement or otherwise, does not guarantee the monetary sufficiency of the Trust Fund nor the legal sufficiency of the Trust Agreement. The failure by any Contributing Settling Defendant to make the payment required by Paragraph 58 shall not excuse or limit the Performing Settling Defendants' obligations under this Consent Decree.

64. Refunds from the Trust Fund. In the event that: (1) the United States or the State does not sign the Decree; (2) the United States formally withdraws its consent to the entry of the Decree after the Decree has been lodged, pursuant to Paragraph 145 of the Decree; (3) the State formally withdraws its consent to the entry of the Decree after the Decree has been lodged, and a United States District Court of competent jurisdiction (the "Court") consents to the State's withdrawal from the Consent Decree, pursuant to Paragraph 145 of the Decree; or (4) a final judicial determination is made by the Court that the Decree will not be approved and entered; then the monies of the Trust Fund shall, within thirty days of receipt of written notice from the United States of one of the above events, be refunded to the Contributing Settling Defendants. Any refunds made under this Paragraph shall include the interest accrued on the payment, if any, minus a pro-rata share of the taxes payable by the Trust Fund and the expenses of administering the Trust Fund.

65. Disbursements from the Trust Fund. The provisions of this Paragraph are conditioned upon the Court's approval of this Consent Decree.

a. Within 60 days after the Effective Date, \$679,612 of the monies in the Trust Fund shall be paid to the Town and \$639,302 of the monies in the Trust Fund shall be paid to UTC.

b. Except as provided in Subparagraph 65.c, the Town and UTC may submit to the Trustee for payment invoices for the work performed in completing the ROD in accordance with the Consent Decree. Such invoices may include attorneys' fees only for drawing necessary contract documents and such other documents as are necessary: (i) for obtaining contractors for the Work, (ii) for activities associated with: the acquisition of properties necessary for the implementation of the Remedial Action, relocation of residents located on those properties, relocation of businesses as necessary for the implementation of the Remedial Action, obtaining of access, implementation or establishment of institutional controls, and/or (iii) for complying with relevant permitting requirements at the Site.

c. Monies in the Trust Fund may not be used for the costs incurred in connection with any of the activities listed in Subparagraph 13.c, or any payments for Future Response Costs, Past Response Costs, stipulated penalties or attorney's fees or cost of attorney time, other than those attorney's fees or cost of attorney time specified in Subparagraph 65.b.

66. The failure of any Contributing Settling Defendant or the Settling Federal Agencies to make payment as provided in Paragraphs 58 or 59 shall not excuse timely completion of any obligation under this Decree.

67. Payment for Future Response Costs.

a. Performing Settling Defendants shall reimburse the United States for 100% of (1) all costs incurred pursuant to Paragraphs 55, 74 or 113; and (2) all costs incurred in seeking to enforce any provision of this Consent Decree against Performing Settling Defendants.

b. Except as provided in Subparagraph 67.c, Performing Settling Defendants shall reimburse the United States for 36.91% of all costs incurred by the United States in connection with: (1) the relocation of the Residential Owners to the extent such costs exceed \$400,000; (2) the actions or activities undertaken pursuant to Subparagraph 18.b and Paragraph 31.

c. The United States' contributions to the remedy, by providing reimbursements from the Fund pursuant to Subparagraph 70.a and by foregoing reimbursement of Future Response Costs pursuant to Subparagraph 67.b, shall not exceed \$8,800,165. Accordingly, Performing Settling Defendants shall reimburse the United States for 100% of the Future Response Costs listed in Subparagraph 67.b, to the extent the sum of reimbursements from the Fund pursuant to Subparagraph 70.a and the unreimbursed portion of Future Response Costs pursuant to Subparagraph 67.b exceeds \$8,800,165.

d. If the United States incurs costs payable under this Paragraph, EPA shall, on a periodic basis, send Performing Settling Defendants a bill, including a summary of the costs incurred. Except as provided in Paragraph 69, Performing Settling Defendants shall make all payments within 60 days of the date of the bill. The Performing Settling Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and Site/Spill ID No. 01-58, DOJ Case No. 90-11-2-420A and the name and address of the party making payment. The Performing Settling Defendants shall forward the certified check(s) to EPA Region I - New England, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251 and shall send copies of the check and transmittal letter to the United States pursuant to Paragraph 135.

68. Performing Settling Defendants may contest payment of any Future Response Costs billed pursuant to Paragraph 67 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of the date of the bill and must be sent to the United States pursuant to Paragraph 135. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, and except as provided in Paragraph 69, the Performing Settling Defendants shall within the 60 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 67. Simultaneously, the Performing Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Connecticut and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Performing Settling Defendants shall send to the United States, pursuant to Paragraph 135, a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Performing Settling Defendants shall initiate the Dispute Resolution procedures in Section XXI (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Performing Settling Defendants shall pay the sums due (with accrued interest) to the United States, in the manner described in Paragraph 67. If the Performing Settling Defendants prevail concerning any aspect of the contested costs, the 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 in the manner described in Paragraph 67; Performing Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Performing Settling Defendants' obligation to reimburse the United States or the State for its Future Response Costs.

69. In the event that the payments required pursuant to Paragraphs 67 and 68 must be obtained by the Town through a referendum, Performing Settling Defendants shall have an additional 40 days to make such payments. In the event that the payments required by Paragraphs 67 or 68 are not made within 60 days of the date of the bill, Performing Settling Defendants shall pay Interest on the unpaid balance. In the event that any payment required by Paragraph 58 is not made by the due date, the Contributing Settling Defendant required to make such payment shall pay Interest on its unpaid balance. The Interest shall begin to accrue on the date payment is due under Paragraph 58. The Interest shall accrue through the date of the payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to make timely payments under this Section.

#### XVII. CLAIMS AGAINST THE SUPERFUND

70. a. Except as otherwise provided in this Subparagraph, pursuant to Sections 111(a)(2), 112, and 122(b)(1) of CERCLA, 42 U.S.C. §§ 9611(A)(2), 9612, and 9622(b)(1), Performing Settling Defendants may submit a claim for reimbursement to the Hazardous Substance Superfund (the "Fund") for up to 63.09% of the necessary costs incurred in completing the Remedial Action in accordance with this Consent Decree and Appendix G



(Preauthorization Decision Document). No claim may be submitted for costs for O&M, including, but not limited to, costs incurred pursuant to Subparagraph 13.c. In no event shall Performing Settling Defendants' total claim(s) against the Fund under this Section exceed the lesser of: (1) \$8,800,165, less the unreimbursed portion of Future Response Costs pursuant to Subparagraph 67.b; or (2) 63.09% of the necessary costs, other than the costs of O&M, incurred in completing the Remedial Action. Reimbursement from the Fund shall be subject to the provisions of Section 112 of CERCLA, 42 U.S.C. § 9612, the regulations set forth in 40 C.F.R. Part 307, and the applicable claims and audits procedures specified in Appendix G, and shall be made in accordance with the procedures outlined in Appendix G. EPA shall use best efforts to provide reimbursement on completed reimbursement requests within 60 days of perfection of the claim pursuant to 40 C.F.R. § 307.32(c). Performing Settling Defendants' claim(s) against the Fund may cover only those costs incurred during the implementation of the Remedial Action, and shall include attorneys' fees only for drawing necessary contract documents and such other documents as are necessary for obtaining contractors for the Work, for activities associated with the relocation of the businesses and residences at the Site, and/or the acquisition of properties necessary for the implementation of the Remedial Action, for development of applications for reimbursement to the Fund, for obtaining access, for establishing institutional controls, and for complying with relevant permitting requirements at the Site, and must otherwise meet the requirements of 40 C.F.R. Part 307. Pursuant to this Section of the Consent Decree, Performing Settling Defendants shall not submit a claim for Past Response Costs, any payments for Future Response Costs, stipulated penalties or attorneys' fees or costs of attorney time, other than those specified in this Paragraph.

b. EPA does not intend to consider any modifications to the Preauthorization Decision Document to the extent such modification would result in an increase in the maximum amount or percentage of preauthorized claims. Performing Settling Defendants shall notify the United States when all of the payments from the Contributing Settling Defendants that were deposited into the Trust Fund have been expended in completing the Remedial Action. Prior to such notice, Performing Settling Defendants shall deposit all reimbursements from the Fund into the Trust Fund. After such notice, Performing Settling Defendants may liquidate the Trust Fund.

71. If EPA denies a claim for reimbursement in whole or in part, it shall notify the Performing Settling Defendants of the reason for such denial. Within 30 days after receiving notice of EPA's decision, the Performing Settling Defendants may request an administrative hearing as provided in Section 112(b)(2) of CERCLA, 42 U.S.C. § 9612(b)(2), and 40 C.F.R. Part 307. If EPA fails to pay Performing Settling Defendants' claim within 60 days of receipt of a perfected claim, as defined in 40 C.F.R. § 307.14, interest shall accrue on the amount due and payable to the Performing Settling Defendants.

72. Pursuant to Section 112(c)(1) of CERCLA, 42 U.S.C. § 9612(c)(1), Performing Settling Defendants hereby subrogate their rights to the United States to recover from other parties liable pursuant to CERCLA Section 107, 42 U.S.C. § 9607, any costs reimbursed to the Performing Settling Defendants under this Section, and Performing Settling Defendants and their contractors shall assist in any action to recover these costs which may be initiated by the United States. All of the Performing Settling Defendants' contracts for implementing the Preauthorization Decision Document shall include a specific requirement that the contractors agree to provide this cost recovery assistance to the United States. The cost recovery assistance shall include, but not be limited to, furnishing the personnel, services, documents, and materials requested by the United States to assist the United States in documenting the

work performed and costs expended by Performing Settling Defendants or Performing Settling Defendants' contractors at the Site in order to aid in cost recovery efforts. Assistance shall also include providing all requested assistance in the interpretation of evidence and costs, and providing requested testimony.

73. The Performing Settling Defendants shall not make any claim against the Fund for any costs incurred pursuant to Paragraph 72.

#### XVIII. INDEMNIFICATION AND INSURANCE

74. a. The United States and the State do not assume any liability by entering into this agreement or by virtue of any designation of Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Performing 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 Performing 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 Performing Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Performing Settling Defendants agree to pay the United States and the State, as Future Response Costs, 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 Performing 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 Performing Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Performing 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 Performing Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 74, and shall consult with Performing Settling Defendants prior to settling such claim.

75. Performing 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 Performing Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Performing 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 Performing Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

76. No later than 15 days before commencing any on-site Work, Performing Settling Defendants shall secure, and shall maintain until issuance by EPA of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 53.b comprehensive general liability insurance with limits of \$3,000,000, combined single limit, and automobile liability insurance

with limits of \$1,000,000, combined single limit, naming the United States and the State as additional insured. In addition, for the duration of this Consent Decree, Performing Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of 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 insurance and a copy of each insurance policy. Performing Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. 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.

#### XIX. FORCE MAJEURE

77. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Performing Settling Defendants, of any entity controlled by Performing Settling Defendants, or of Performing Settling Defendants' contractors, that delays or prevents or may delay or prevent the performance of any obligation under this Consent Decree despite Performing Settling Defendants' best efforts to fulfill the obligation. The requirement that the Performing 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.

78. 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 Performing 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 Site Restoration and Remediation Division, EPA Region I—New England within 48 hours of when Performing Settling Defendants first knew that the event might cause a delay. Within 15 days thereafter, Performing 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 Performing 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 Performing Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Performing 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 Performing 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. Performing Settling Defendants shall be deemed to know of any circumstance of which Performing Settling Defendants, any entity controlled by

Performing Settling Defendants, or Performing Settling Defendants' contractors knew or should have known.

79. 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 Performing 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 Performing Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

80. If the Performing Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Performing 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 Performing Settling Defendants complied with the requirements of Paragraphs 77 and 78, above. If Performing Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Performing Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

#### XX. DISPUTE RESOLUTION

81. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Settling Defendants or between the State and Settling Defendants arising under or with respect to this Consent Decree. Contributing Settling Defendants may not invoke the procedures set forth in this Section except as provided in Paragraph 23. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 81 through 87. The State may participate in such dispute resolution proceedings to the extent specified in Paragraphs 81 through 87. Disputes exclusively between the State and Settling Defendants are governed by Paragraph 88. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Performing Settling Defendants that have not been disputed in accordance with this Section.

82. 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 to the dispute a written Notice of Dispute.

83. With respect to disputes involving the Performing Settling Defendants, the United States or the Performing Settling Defendants may, at any time during the informal dispute

resolution period, propose the use of a mediator to assist in resolving the dispute. Provided that both the United States and the Performing Settling Defendants agree to the use of a mediator, a meeting shall take place between the parties to the dispute with the assistance of a mediator for the purpose of resolving the dispute and/or determining whether to undertake further mediated discussions. The parties shall make best efforts to conduct this initial meeting within ten business days of the proposal to use a mediator. Upon the written agreement of the parties to the dispute, the period for informal dispute resolution may be extended for the purpose of mediating the dispute. Formal dispute resolution, as governed by the procedures set forth in Paragraph 84 shall commence immediately upon the termination of the informal dispute resolution period. After the initial mediated meeting, the decision to continue the mediation shall be in the sole discretion of each party to the dispute. The mediation shall be conducted in accordance with then-applicable policies of the United States. Any fees or expenses incurred in connection with the mediation shall be paid by the Performing Settling Defendants. EPA may determine whether to participate in the funding of the mediation, subject to the availability of funds for this purpose. The United States and the Performing Settling Defendants agree that they shall, after the Consent Decree is signed by Performing Settling Defendants, (1) prepare a list of mediators agreeable to the parties from which a mediator may be selected, although this list shall not preclude any party from proposing to add a mediator or mediators to the list or from proposing a different mediator for a specific dispute; and (2) prepare and execute a confidentiality agreement which will apply to all mediated discussions under this Paragraph.

84. a. In the event that the parties to the dispute cannot resolve a dispute by informal negotiations under Paragraphs 82 and/or 83, then the position advanced by EPA, after reasonable opportunity for review and comment by the State, shall be considered binding unless, within ten days after the conclusion of the informal negotiation period, the Settling Defendant(s) involved in the dispute invokes 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 such Settling Defendant(s). The Statement of Position shall specify such Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 85 or Paragraph 86.

b. Within 14 days after receipt of the Settling Defendant(s)' Statement of Position, EPA, after reasonable opportunity for review and comment by the State, will serve on the Settling Defendant(s) and the State its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. The State, after reasonable opportunity for review and comment by EPA, may also serve a Statement of Position within the 14-day time limit set forth above in this Paragraph. In any dispute between EPA and the Settling Defendants, EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 85 or 86. Within 14 days after receipt of EPA's Statement of Position, the Settling Defendant(s) may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 85 or 86, 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 85 and 86.

85. *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 Office of Site Remediation and Restoration, EPA Region I-New England, will issue a final administrative decision resolving the dispute based on the administrative record described in Subparagraph 85.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Subparagraphs 85.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 85.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 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion within 30 days of such motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office of Site Remediation and Restoration 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 Subparagraph 85.a.

86. *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 the Settling Defendant(s)' Statement of Position submitted pursuant to Paragraph 84, the Director of the Office of Site Remediation and Restoration, EPA Region I-New England, after reasonable opportunity for review and comment by the State, will issue a final decision resolving the dispute. The Director's decision shall be binding on the Settling Defendant(s) unless, within ten days of receipt of the decision, the Settling Defendant(s) files 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 the Settling Defendant(s)' motion within 30 days of such motion.

b. Notwithstanding Paragraph O of Section 1 (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

87. 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, after reasonable opportunity for review and comment by the State, 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 99. 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 Defendant(s) does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

88. Disputes solely between the State and Settling Defendants. Disputes arising under the Consent Decree between the State and Settling Defendants that relate to Future Response Costs owed to the State or assessment of stipulated penalties by the State shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 81 through 87, except that each reference to EPA shall read as a reference to CDEP, each reference to the Director of the Office of Site Remediation and Restoration, EPA Region I, shall be read as a reference to the Director of the Permitting, Enforcement, Remediation Division, Connecticut DEP, and each reference to the United States shall be read as a reference to the State.

**XXI. STIPULATED PENALTIES**

89. Performing Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 90.a and 91 to the United States and the State for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX (Force Majeure) or Paragraph 95. The Performing Settling Defendants shall pay 90% of the stipulated penalties to the United States, and shall pay 10% to the State in accordance with the requirements of Paragraph 97. "Compliance" by Performing 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 or the State for the obligations specified below in Paragraph 100, pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

90. a. The following stipulated penalties shall be payable per violation per day to the United States and the State for any noncompliance identified in Subparagraph b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1 <sup>st</sup> through 10 <sup>th</sup> day
\$2,000	11 <sup>th</sup> through 30 <sup>th</sup> day
\$3,000	31 <sup>st</sup> day through 60 <sup>th</sup> day
\$5,000	61 <sup>st</sup> day and beyond

b. Compliance Milestones.

- (1) 30% Remedial Design

- (2) 100% Remedial Design
- (3) Institutional Controls Plan
- (4) Access (Request for)
- (5) Long-Term Monitoring Plan
- (6) Long-Term Monitoring Implementation
- (7) Remedial Action Work Plan
- (8) Construction 100% Complete
- (9) Final Construction Inspection
- (10) Remedial Action Report and Final Operations & Maintenance Plan

91. The following stipulated penalties shall be payable per violation per day to the United States and the State for failure to submit timely or adequate reports or other written documents pursuant to the SOW and this Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1 <sup>st</sup> through 14 <sup>th</sup> day
\$1,500	15 <sup>th</sup> day and beyond

92. In the event that EPA or the State assumes performance of a portion or all of the Work pursuant to Paragraph 113, Performing Settling Defendants shall be liable to the United States for the following stipulated penalties:

\$750,000	If work performance is assumed before the date of Certification of Completion of the Remedial Action;
\$500,000	If work performance is assumed on or after the date of Certification of Completion of the Remedial Action;

93. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section 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 Performing Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Office of Site Remediation and Restoration, EPA Region I-New England, under Paragraph 85.b or 86.a, during the period, if any, beginning on the 21st day after the date that Performing 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 XX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

94. Each Contributing Settling Defendant shall be liable for stipulated penalties in the amount of \$500 per day for failure to make a timely payment of the settlement amount specified for that Contributing Settling Defendant in Appendix D. All penalties shall begin to accrue on



the day after the payment is due, and shall continue to accrue through the day payment is received by the Trustee for the Trust Fund.

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

96. Following EPA's determination, after a reasonable opportunity for review and comment by the State, that Performing Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Performing Settling Defendants written notification of the same and describe the noncompliance. EPA or EPA and the State jointly, may send the Performing Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in Paragraph 93 regardless of whether EPA has notified the Performing Settling Defendants of a violation.

97. All penalties owed by Performing Settling Defendants to the United States and/or the State under this Section shall be due and payable to the United States and/or the State within 60 days of the Performing Settling Defendants' receipt from EPA, or the State for the obligations specified below in Paragraph 100, or EPA and the State jointly, of a demand for payment of the penalties, unless Performing Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to: EPA Region 1-New England, Attn: Superfund Accounting, P.O. Box 360197M, Pittsburgh, PA 15251, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID No. 01-58, DOJ Case No. 90-11-2-420A 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 pursuant to Paragraph 135. All payments to the State under this Section shall be paid by certified or cashier's check(s) made payable to "State of Connecticut", shall be mailed to the State in accordance with Paragraph 135 and shall indicate that the payment is for stipulated penalties. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States in accordance with Paragraph 135.

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

99. Penalties shall continue to accrue as provided in Paragraph 93 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA, or the State as applicable, that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA and the State within 15 days of the agreement or the receipt of EPA's or the State's decision or order;

b. If the dispute is appealed to this Court and the United States or the State as applicable, prevails in whole or in part, Performing Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA and the State 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, Performing Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States or the State 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 and the State or to Performing Settling Defendants or the Contributing Settling Defendants, as appropriate, to the extent that they prevail.

100. State Assessment of Stipulated Penalties. Assessment of stipulated penalties by the State shall be governed in the following manner. Following the State's determination that Performing Settling Defendants have failed to timely submit deliverables to the State, or have failed to timely provide such written or oral notices to the State as are required by this Consent Decree, or have violated any institutional controls established pursuant to this Consent Decree for which CDEP, at the time of such violation, has accepted assignment of any interest therein granted to EPA, the State may, after reasonable opportunity for review and comment by EPA, give Performing Settling Defendants written notification of the same and describe the noncompliance. The provisions for liability, assessment and payment of the stipulated penalties referenced in this Paragraph shall be the same as provided in Paragraphs 89 through 99, except that in Paragraph 96, excluding the last sentence of that Paragraph, and in Paragraph 99, each reference to EPA shall read as a reference to CDEP, each reference to the United States shall be read as a reference to the State, each reference to the State shall be read as a reference to the United States, and each reference to the State's reasonable opportunity to review and comment shall be read as EPA's reasonable opportunity for review and comment. For penalties assessed under this Paragraph, the Performing Settling Defendants shall pay 90% to the State, and shall pay 10% to the United States in accordance with the requirements of Paragraph 97.

101. a. If Settling Defendants fail to pay stipulated penalties when due, the United States or the State, as applicable, may institute proceedings to collect the penalties, as well as interest. Each Settling Defendant shall pay interest on the unpaid balance attributable to it, which shall begin to accrue on the date of demand made pursuant to Paragraph 97.

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 has been collected hereunder, except in the case of a willful violation of the Consent Decree.

102. No payments made under this Section shall be tax deductible for Federal or State tax purposes.

## XXII. COVENANTS BY PLAINTIFFS

103. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants, and the payment that will be made by the Settling Federal Agencies under the terms of this Consent Decree:

a. except as specifically provided in Paragraphs 105, 106, 107 and 112, the United States covenants not to sue or take administrative action against Settling Defendants, and EPA covenants not to take administrative action against the Settling Federal Agencies, pursuant to CERCLA Sections 106 and 107(a), for implementation of the ROD and for recovery of Past Response Costs and future costs relating to the ROD;

b. except as specifically provided in Paragraphs 105, 106, 107 and 112, the United States covenants not to sue or take administrative action against GE pursuant to CERCLA Sections 106 and 107(a) for implementation of the Groundwater Remedy and for recovery of Groundwater Remedy Costs to the extent the cost of the Groundwater Remedy does not exceed \$15,000,000;

c. except as specifically provided in Paragraphs 106, 107 and 112, the United States covenants not to sue or take administrative action against ATP Parties and Owner Settling Defendants pursuant to CERCLA Sections 106 and 107(a) for implementation of the Groundwater Remedy and for recovery of Groundwater Remedy Costs;

d. except as specifically provided in Paragraphs 105, 108, 109 and 112, the State covenants not to sue or take administrative action against Settling Defendants and the Settling Federal Agencies pursuant to CERCLA Section 107(a) and Conn. Gen. Stat. §§ 22a-6, 22a-133g, 22a-432 or 22a-451 for implementation of the ROD and for recovery of Past Response Costs or future costs relating to the ROD;

e. except as specifically provided in Paragraphs 105, 108, 109 and 112, the State covenants not to sue or take administrative action against GE pursuant to CERCLA Section 107(a) and Conn. Gen. Stat. §§ 22a-6, 22a-133g, 22a-432 or 22a-451 for implementation of the Groundwater Remedy and for recovery of Groundwater Remedy Costs to the extent the cost of the Groundwater Remedy does not exceed \$15,000,000;

f. except as specifically provided in Paragraphs 108, 109 and 112, the State covenants not to sue or take administrative action against ATP Parties and Owner Settling Defendants pursuant to CERCLA Section 107(a) and Conn. Gen. Stat. §§ 22a-6, 22a-133g, 22a-432 or 22a-451 for implementation of the Groundwater Remedy and for recovery of Groundwater Remedy Costs; and

g. Except as provided in Paragraph 111, the United States covenants not to sue or to take administrative action against Settling Defendants, and the United States, on behalf of NOAA, covenants not to take administrative action against Settling Federal Agencies, for recovery of damages for injury to, destruction of, or loss of Natural Resources under the trusteeship of NOAA, including the reasonable cost of assessing such injury, destruction or loss.

104. Except with respect to future liability, these covenants not to sue or, if applicable, to take administrative action: (1) as to each Contributing Settling Defendant which has made its payment, Owner Settling Defendants, and the Performing Settling Defendants shall take effect upon the Effective Date; and (2) as to the Settling Federal Agencies shall take effect after making payment in accordance with Paragraph 59. With respect to future liability, these covenants not to sue or take administrative action shall take effect upon Certification of Completion of the Remedial Action by EPA pursuant to Paragraph 53.b. These covenants not to sue or take administrative action with respect to each Contributing Settling Defendant and the Settling Federal Agency are conditioned upon the satisfactory performance by such Contributing Settling Defendant or the Settling Federal Agency, as appropriate, of its obligations under this Consent Decree. These covenants not to sue or take administrative action with respect to each Performing Settling Defendant are conditioned upon the satisfactory performance of both Performing Settling Defendants' obligations under this Consent Decree. These covenants not to sue or to take administrative action as to Settling Defendants and the Settling Federal Agencies extend only to the Settling Defendants and the Settling Federal Agencies and do not extend to any other person.

105. Reservation Regarding Groundwater Remedy. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, (a) the right to institute proceedings in a new action against Settling Defendants other than GE, the ATP Parties or the Owner Settling Defendants, or to issue an administrative order seeking to compel Settling Federal Agencies and Settling Defendants, other than GE, the ATP Parties or the Owner Settling Defendants, to perform response action(s) selected in future record(s) of decision and/or future action memorandum(a) with respect to the groundwater at or migrating from the Site or to reimburse Groundwater Remedy Costs; and (b) the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel GE to perform response action(s) selected in future record(s) of decision and/or future action memorandum(a) with respect to the groundwater at or migrating from the Site or to reimburse Groundwater Remedy Costs to the extent the cost of such response action(s) or Groundwater Remedy Costs exceed \$15,000,000.

106. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action seeking to compel Settling Defendants, or to issue an administrative order seeking to compel Settling Defendants and the Settling Federal Agencies:

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response,

if, prior to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines based on these previously unknown conditions or information together with any other relevant information that the Remedial Action is not protective of human health or the environment.

107. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action against Settling Defendants, or to issue an administrative order seeking to compel Settling Defendants and the Settling Federal Agencies:

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response,

if, subsequent to Certification of Completion of the Remedial Action:

- (1) conditions at the Site, previously unknown to EPA, are discovered, or
- (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines based on these previously unknown conditions or this information together with other relevant information that the Remedial Action is not protective of human health or the environment.

108. State's Pre-Certification Reservations. Notwithstanding any other provisions of this Consent Decree, the State on behalf of the CDEP, reserves, and this Consent Decree is without prejudice to, any right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under Conn. Gen. Stats. §§ 22a-6, 22a-432 and 22a-451 seeking to compel all or any of the Settling Defendants: (a) to perform other response actions at the Site, or (b) to reimburse the State for additional response costs for response actions at the Site, to the extent that EPA has determined that such actions required under (a) and (b) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, prior to Certification of Completion of the Remedial Action:

a. conditions at the Site, previously unknown to the State, are discovered or become known to the State, or

b. information previously unknown to the State is received by the State, in whole or in part,

and the CDEP Commissioner, or his or her delegate determines, pursuant to Conn. Gen. Stats. §§ 22a-6, 22a-432 or 22a-451, based on these previously unknown conditions or this information together with any other relevant information that the response actions taken do not fully protect health, public welfare and the environment, or do not abate the cause of pollution to the waters of the State or the maintenance of a discharge of treated or untreated wastes to the waters of the State. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

109. State's Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State, on behalf of the CDEP reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under Conn. Gen. Stats. §§ 22a-6, 22a-432 or 22a-451, seeking to compel all or any of the Settling Defendants (a) to perform other response actions at the Site, or (b) to reimburse the State for additional response costs for response actions at the Site, to the extent that EPA has determined that such actions required under (a) and (b) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, subsequent to Certification of Completion of Remedial Action:

a. conditions at the Site, previously unknown to the State, are discovered or become known by the State after the Certification of Completion, or

b. information previously unknown to the State is received by the State, in whole or in part, after the Certification of Completion,

and the CDEP Commissioner, or his or her delegate, determines, pursuant to Conn. Gen. Stats. §§ 22a-6, 22a-432 or 22a-451, or his or her delegatee, based on these previously unknown conditions or this information together with any other relevant information, that the response actions taken do not fully protect health, public welfare and the environment, or do not abate the cause of pollution to the waters of the State or the maintenance of a discharge of treated or untreated wastes to the waters of the State. The United States reserves all rights it

may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

110. For purposes of Paragraphs 106 and 108, the information and the conditions known to EPA and the State, as applicable, shall include only that information and those conditions known to EPA or the State, as applicable, (a) as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision, and (b) as of December 1, 1997 and set forth in reports and data issued on or before December 1, 1997 relating to the on-site and northern off-Site landfill gas monitoring program. For purposes of Paragraphs 107 and 109, the information and the conditions known to EPA and the State, as applicable, shall include only that information and those conditions known to EPA and the State, as applicable, as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA or the State, as applicable, pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

111. Reservations Concerning Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States, on behalf of NOAA, reserves the right to institute proceedings against Settling Defendants in this action or in a new action, and the United States, on behalf of NOAA, reserves the right to take administrative action against Settling Federal Agencies, seeking recovery of natural resource damages, based on (a) conditions with respect to the Site, unknown to NOAA as of December 1, 1997, that result in release(s) of hazardous substance(s) that contribute to injury to, destruction of, or loss of natural resources, or (b) information received after December 1, 1997 which indicates that there is injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to NOAA as of December 1, 1997.

112. 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 103. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against each Settling Defendant, and EPA and the State reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all other matters, including, but not limited to, the following:

- a. claims based on a failure by such Settling Defendant or the Settling Federal Agencies 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 Site by such Settling Defendant or Settling Federal Agencies;
- c. liability for future disposal of Waste Material at the Site by such Settling Defendant, other than as provided in the ROD, the SOW or otherwise ordered by EPA;
- d. liability for damages for injury to, destruction of, or loss of natural resources except for those under the trusteeship of NOAA, including the reasonable cost of assessing such injury, destruction or loss;
- e. criminal liability;
- f. liability for violations of federal or state law;

g. with respect to Performing Settling Defendants, 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 15 (Modification of the SOW or Related Work Plans); and

h. claims against each Performing Settling Defendant based on a failure by another Performing Settling Defendant to meet a requirement of this Consent Decree.

113. Work Takeover. In the event EPA determines that Performing Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Performing Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution), Paragraph 85, 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 Performing Settling Defendants shall reimburse EPA.

114. 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.

### XXIII. COVENANTS BY SETTLING DEFENDANTS

115. Covenant Not to Sue. Subject to the reservations in Paragraph 116, 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 for recovery of Past Response Costs and for recovery of future costs relating to the ROD and for implementation of the ROD, and GE hereby covenants not to sue and agrees not to assert any claims or causes of action with respect to Groundwater Remedy Costs to the extent such costs do not exceed \$15,000,000, 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, except to the extent authorized by this Consent Decree and 40 C.F.R. § 307;
- b. any claims under CERCLA Sections 107 or 113 related to the Site;
- c. any claims arising out of response activities at the Site, including claims based on EPA's and the State's selection of response actions, oversight of response activities or approval of plans for such activities;
- d. any claims for costs, fees, or expenses incurred in this action or related to the Site, including claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended; or
- e. any claim under the United States Constitution, the Connecticut Constitution, the Tucker Act, 28 U.S.C. § 1491, or at common law, or arising out of or relating to past or future access to, imposition of covenants, conditions and restrictions on, or other restrictions on the use or enjoyment of property owned or controlled by the Settling Defendants affected by the covenants, conditions, and restrictions and access rights herein;

116. Each Settling Defendant reserves, and this Consent Decree is without prejudice to: (1) contribution claims against the Settling Federal Agencies or any other Settling Defendant in the event any claim is asserted by the United States or the State against the Settling Defendants under the authority of or under Paragraphs 106 through 112, but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States or the State; or (2) claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Performing 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;

117. Except as specifically provided in Section XVII (Claims against the Superfund), 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).

118. Except as provided in Paragraph 116, the Town, UTC and GE waive all claims or causes of action that they may have for Matters Addressed against the following persons:

- a. any Settling Defendant;
- b. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of only Municipal Solid Waste or Sewage Sludge owned by such person; and
- c. any person (i) whose liability to Settling Defendants with respect to the Site is based solely on CERCLA § 107(a)(3) or (4), and (ii) who arranged for the disposal, treatment, or transport for disposal or treatment, or accepted for transport for disposal or treatment, of 55 gallons or less of liquid materials containing hazardous substances, or 100 pounds or less of solid materials containing hazardous substances, except where EPA has determined that such material contributed or could contribute significantly to the costs of response at the Site.

119. Except as provided in Paragraphs 116 and 122, Owner Settling Defendants and Contributing Settling Defendants waive all claims or causes of action that they may have for Matters Addressed against any person other than insurance carriers.

120. GE waives all claims or causes of action that it may have for Groundwater Remedy Costs to the extent such costs do not exceed \$15,000,000, against any person other than insurance carriers.

121. ATP Parties and Owner Settling Defendants waive all claims and causes of action for Groundwater Remedy Costs, including for contribution, against any person, other than insurance carriers.



122. Except as provided in Paragraph 116: (a) Western Pacific Industries, Inc. reserves and this Consent Decree is without prejudice to, its rights against Roper Industries, Inc., Roper Whitney, Inc., James J. Lawrence and B & S Company and their officers, directors, agents, successors and assigns; (b) Torrey S. Crane Company reserves and this Consent Decree is without prejudice to, its rights against D. M. Sawyer, Inc. and its officers, directors, agents, successors and assigns and Della M. Sawyer; (c) CLR Corporation reserves and this Consent Decree is without prejudice to, its rights against The Spark Corporation, previously known as Alsop Engineering Corporation, a New York corporation, and Stavo Industries, Inc., and their officers, directors, agents, successors and assigns; (d) Towne Dry Cleaners reserves and this Consent Decree is without prejudice to its rights against Althea Piteo; and (e) J.J. Ryan Corp. reserves and this Consent Decree is without prejudice to its right against Pacific Chloride, Inc. and GNB Technologies and their officers, directors, agents, successors and assigns.

#### XXIV. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

123. 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. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

124. The Parties agree, and by entering this Consent Decree this Court finds, that as of the Effective Date: (a) the Settling Defendants and the Settling Federal Agencies are entitled 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; (b) GE is entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for Groundwater Remedy Costs to the extent such costs do not exceed \$15,000,000 and (c) the ATP Parties and the Owner Settling Defendants are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for Groundwater Remedy Costs.

125. The Town, UTC and GE agree that with respect to any suit or claim for contribution brought by them for Matters Addressed 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.

126. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for Matters Addressed they will notify in writing the United States and the State within 20 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States and the State within 20 days of service or receipt of any Motion for Summary Judgment and within 20 days of receipt of any order from a court setting a case for trial.

127. 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 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 XXII (Covenants by Plaintiffs).

## XXV. ACCESS TO INFORMATION

128. The Contributing and Performing 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 activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Performing 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. Owner 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 their ownership or control of any property located within the Site.

129. 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.

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

## XXVI. RETENTION OF RECORDS

131. Until ten years after the Performing Settling Defendants' receipt of EPA's notification pursuant to Paragraph 54.b, each Performing 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 Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Performing Settling Defendants' receipt of EPA's notification pursuant to Paragraph 54.b, Performing 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.

Except as provided below, until ten years after the Effective Date, each Contributing 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 liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Contributing Settling Defendants may request a waiver of the requirements of this Paragraph with respect to certain records or documents generated in connection with the allocation process and/or the *de minimis* settlement for the Site, or attached thereto, and shall submit a list to the United States specifically identifying such records or documents. Provided that the United States, after consultation with Performing Settling Defendants, approves the list, Contributing Settling Defendants shall not be required to retain the records or documents identified on the approved list. The United States' decision regarding waiver of the requirements of this Paragraph shall not be subject to dispute resolution. Until ten years after the Effective Date, each Owner 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 its ownership or control of property located within the Site, regardless of any corporate retention policy to the contrary.

132. At the conclusion of the document retention periods described in Paragraph 131, 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 preserve such documents and 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. Settling Defendants shall preserve all documents for which they have asserted a privilege until all disputes regarding such privilege have been resolved.

133. 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 Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to 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.

134. Each Settling Federal Agency hereby certifies that: (1) it has complied, and will continue to comply, with all applicable Federal record retention laws, regulations, and policies; (2) to the best of its knowledge and belief, after reasonable 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 Site since notification of potential liability by EPA ; and (3) it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(a), and Section 3007 of RCRA, 42 U.S.C. § 6927.

**XXVII. NOTICES AND SUBMISSIONS**

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

*As to the United States:*

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ No. 90-11-2-420A

Chief, Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

Director, Office of Site Remediation  
and Restoration  
U.S. Environmental Protection Agency  
Region I - New England  
JFK Federal Building, Mail Code HIO  
Boston, MA 02203

*As to EPA:*

Almerinda Silva, EPA Project Coordinator  
U.S. Environmental Protection Agency  
Region I-New England  
JFK Federal Building, Mail Code HBT  
Boston MA 02203

*As to the State:*

Office of the Attorney General  
Environmental Protection Department  
55 Elm Street  
Hartford, CT 06106

Sheila Gleason, Project Coordinator  
State of Connecticut  
Department of Environmental Protection, PERD  
79 Elm Street  
Hartford, Connecticut 06107

*As to the Town:*

Carol Lear, Esq.  
LeBoeuf, Lamb, Greene & MacRae  
225 Asylum Street  
Hartford, CT 06103

*As to UTC:*

David Platt, Esq.  
Murtha, Cullina, Richter & Pinney  
185 Asylum Street  
Hartford, CT 06103

*As to Performing Settling Defendants:*

David Montany  
Project Coordinator  
Pratt & Whitney  
Mail Stop 102-15  
400 Main Street  
East Hartford, CT 06108

*As to those Settling Defendants listed in Appendix H (SRSNE Customer Group Members):*

John Peltonen, Esq.  
Sheehan, Phinney, Bass + Green  
1000 Elm Street  
P.O. Box 3701  
Manchester, NH 03105-3701

*As to all other Settling Defendants:*

The agent authorized to accept service on behalf of the Settling Defendant as set forth on the Settling Defendant's signature page.

Trustee for the Trust Fund:

Kathleen Caldwell Taddei  
Vice President, Corporate Trust  
Citizens Bank  
One Citizens Plaza  
Providence, RI 02903-1330  
(Ph.) 401-456-7684; (Fax) 401-456-5302

**XXVIII. EFFECTIVE DATE**

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

**XXIX. RETENTION OF JURISDICTION**

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

**XXX. APPENDICES**

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

- "Appendix A" is the ROD.
- "Appendix B" is the SOW.
- "Appendix C" is the list of the Contributing Settling Defendants.
- "Appendix D" is the list of settlement payments.
- "Appendix E" is the map of the Site.

- \*Appendix F is the Memorandum of Understanding ("MOU").
- \*Appendix G is the Preauthorization Decision Document ("PDD")
- \*Appendix H is the list of members of the SRSNE Customer Group

#### XXXI. COMMUNITY RELATIONS

139. Pursuant to the SOW, Performing 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 Performing Settling Defendants under the Plan. Performing 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, Performing 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 Site.

#### XXXII MODIFICATION

140. Material modifications to the SOW may be made only by written notification to and written approval of the United States, Performing 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.

141. Modifications to the schedules specified in the Consent Decree for completion of the Work, or 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 Performing Settling Defendants. Such non-material modifications will become effective upon agreement of such parties.

142. Non-material modifications to the Consent Decree other than those addressed above in Paragraph 141 may be made only by written notification to and written approval of the United States, the State and the Settling Defendants affected by the proposed modification. Such modifications will become effective upon filing with the Court by the United States. Material modifications to the Consent Decree and any modifications to the Performance Standards may be made only by written notification to and written approval of the United States, the State, the Settling Defendants affected by the proposed modification, and the Court.

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

144. For purposes of this Section, the Consent Decree shall not include the SOW.

**XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

145. This Consent Decree shall be subject to a 30 day public comment period 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 to the Consent Decree if comments received disclose facts or considerations which show that the Consent Decree is inappropriate, improper or inadequate within the meaning of Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2). The State may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates state law. The United States reserves the right to challenge in court the State withdrawal from the Consent Decree, including the right to argue that the requirements of state law have been waived, pre-empted or otherwise rendered inapplicable by federal law. The State reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In addition, in the event of the United States' withdrawal from this Consent Decree, the State reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

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

**XXXIV. SIGNATORIES/SERVICE**

147. Each undersigned representative of a Settling Defendant to this Consent Decree, the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Assistant Attorney General for the State of Connecticut 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.

148. 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.

149. 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.

**XXXV. FINAL JUDGMENT**

150. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 1997.

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United States District Judge



UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

*JK*  
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5

STATE OF CONNECTICUT

v.

CIVIL NO. 3:98cv0236 (AHN)

*B*

TOWN OF SOUTHTON, et al

**JUDGMENT**

The Honorable Alan H. Nevas, United States District Judge having granted the plaintiff's unopposed motion to enter consent decree as a final judgment dated June 10, 1998,

It is therefore **ORDERED** and **ADJUDGED** that the matter be and hereby is closed the consent decree, in accordance with the Court's order.

Dated at Bridgeport, Connecticut this 12th day of June, 1998.

KEVIN F. ROWE, Clerk

By

*Carol E. Cannady*  
Carol E. Cannady  
Deputy in Charge

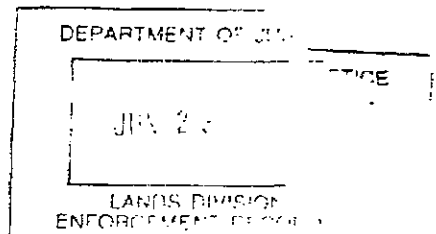


EXHIBIT C

LIST OF CONTRIBUTING SETTLING DEFENDANTS

## APPENDIX C

## LIST OF CONTRIBUTING SETTLING DEFENDANTS

A & F Service Station, Inc.  
 American Standard Co.  
 Ampco-Pittsburgh Corp.  
     Pittsburgh Screw & Bolt Corp.  
     Screw & Bolt Corp.  
     Southington Hardware Mfg. Co.  
 Baron & Young Co., Inc.  
 Bradley Memorial Hospital  
 Brophy Metal Products, Inc.  
 Bruce Manufacturing and Molding Co., Inc.  
 Buswell Metal Products, Inc.  
     Hoke, Inc.  
 CLR Corporation  
     Alsop Engineering Corp.  
 Clark Brothers Bolt Co., Inc. & its Liquidation Trust  
 Viking Aluminum Products, Inc.  
     Rose Aluminum Products, Inc.  
     Columbia Manufacturing  
 Connecticut Centerless Grinding, Inc.  
 Consolidated Industries, Inc.  
 Kearney-National, Inc.  
 Creed Monarch, Inc.  
 Eddy Electric Motor Co., Inc.  
 Elco-Textron Inc.  
 Fansteel, Inc.  
     Mill-All Co.  
 The GMT Manufacturing Co., Inc.  
 GEMCO Manufacturing Co., Inc.  
 Gibbs Wire & Steel Co., Inc.  
 Gould Electronics, Inc.  
     Allied Control Co., Inc.  
     Clevite Corp.  
 Ideal Forging Corporation  
 Imperial Spring Company, Inc.  
 J.J. Ryan Corp.  
     Drill Rite Co.  
     Rex Forge  
 Jay Sons Screw Machine Products, Inc.  
 Kaba High Security Locks Corporation  
 Lake Eyelet Manufacturing Co., Inc.  
 Louis Perillo Oil Co., Inc.  
 Marion Metal Products  
 Marion Tool  
 Phillips Electronics North America Corp.  
     Nelson Screw Machine Co.  
 Nelson Tool & Machine Co., Inc.  
 Newcomb Spring Corp.  
     Nutmeg Spring  
 Nickson Industries, Inc.  
     AAA Metal Stamping  
 Owen Tool & Manufacturing Co., Inc.  
 Palumbo's Exxon  
 Quality Coils, Inc.  
 The Five Star Company  
 The Stanley Works  
 Torrey S. Crane Co.  
 Towne Dry Cleaners, Inc.  
 Wesson Heating and Air Conditioning, Inc.  
 Western Pacific Industries, Inc.  
     Peck, Stow & Wilcox Co. (a/k/a PEXTO I)  
     Peck, Stow & Wilcox Co. (a/k/a PEXTO II)  
     Veeder Root, Inc.  
     Veeder Industries, Inc.  
 Solvents Recovery Service of New England, Inc.  
 Estate of Carleton H. Boll  
 Dainty Rubbish Service, Inc.  
 DiBenedetto's Hauling  
 P.M. Services, Inc.  
 Waste Material Trucking Company  
 The Anchorage, Inc.  
 Apco Products, Inc.  
 Barridon Corporation  
 Millennium Petrochemicals, Inc.  
     Bridgeport Brass Corp.  
 Cramer Controls  
 Fairchild Auto-Mated Parts, Inc.  
 General Host Corp.  
     Allied Leather  
     AMS Industries  
 George Schmitt & Co., Inc.  
 Greenfield Industries, Inc.  
 Guard-Ail Chemical Co., Inc.  
 The Har-Conn Chrome Company  
 Industrial Spraying, Inc.  
 Japenamelac Corp.  
     Nyes Japenamelac Corp.  
 The Job Plating Co., Inc.  
 The John L. Armitage & Company  
 L.E. Mason Co.  
     Magnesium Casting Company  
 M. Swift & Sons, Inc.  
 Mayhew Steel Products, Inc.  
 New Haven Manufacturing Corp.  
 O.S. Walker Company, Inc.  
     Walker Magnetics Group, Inc.  
     Walker Scientific, Inc.  
 Providence Metallizing Company, Inc.  
 Reynolds & Markman, Inc.  
 The Rogers Manufacturing Co., Inc.  
 The Siemon Company  
     The Siemon Co., Siemon-Dynamic Division  
 United Technologies Corp., Hamilton Standard Div.  
     NSI, Inc.  
     Norden Systems, Inc.  
 The W.A. Parsons Company  
 Waterbury Screw Machine Products Co., Inc.

## APPENDIX C

## LIST OF CONTRIBUTING SETTLING DEFENDANTS

A.G. Miller Company, Inc.  
 Philips Automotive Electronics  
     A.W. Haydon Company  
 Acushnet Company Titleist and Foot-Joy Worldwide  
     Acushnet Company, Titleist Golf Division  
 Sunfish Laser, Inc., Escape Sailboat Co., LLC  
     Alcott Sailboats, Inc.  
 Alinabal, Inc. - Laminated Shim  
 Allied Metal Prod. Co.  
 Cytec Industries  
     American Cyanamid Co.  
 American Home Products Corp.  
     Adams Plastic  
 American Meter Co.  
 American Optical Co.  
 American Standard Inc.  
     C.F. Church  
 The Tonon Group, Inc.  
     Amesbury Metal Prod./Peter Gray/Robert Tonon  
     Westwood Corp.  
 ARCO Environmental Remediation, LLC  
     American Brass Co. (Waterbury, CT)  
     American Brass Co. (Ansonia, CT)  
     Anaconda  
     Atlantic Richfield Company  
 Anderson and Sons, Inc.  
 Arden Jewelry Manufacturing Co.  
 Armstrong Rubber Company  
     Pirelli Armstrong Tire Corp.  
     Pirelli Tire Corp.  
 Arrow Automotive Industries, Inc.  
     Arrow Armatures, Inc.  
 Autoswage Products, Inc.  
 Avery Dennison Corp.  
     Avery - Dennison Mfg. - Dennison Mfg. Co.  
 B.A. Ballou & Company  
 B.F. Goodrich  
 B.J. Tool Company, The  
 Ball & Socket Manufacturing Co., Inc.  
 Barden Corp.  
     Winsted Precision Ball Co.  
     Lacey Manufacturing Company  
 Bass Plating Co., The  
 Mestek, Inc.  
     Beacon Morris Corp.  
 Berlin Heat Treating Co., Inc.  
 Berol Corp.  
     Eagle Pencil Co., Inc.  
 BIC Corporation  
 Bird Incorporated  
     Bird & Sons  
 The Black & Decker Corp.  
 Emhart Corp.  
 Emhart Industries, Inc.  
 Emhart Industries, Inc. - Hardware Div.  
 American Hardware  
 P&F Corbin  
 Bailey Corp-USM Corp.  
 Akzo Nobel Inc.  
     Akzona Inc.  
     Brand Rex Co.  
 Branson Instrument Co.  
     Branson Ultrasonics Corp.  
 Bridgeport Metal Goods  
 Framatome Connectors USA Inc.  
     Bumdy Corp.  
 Unisys Corp.  
     Burroughs Corp.  
     Wheeler Electric Co.  
 C. Cowles & Company  
 CBS Broadcasting Inc.  
     CBS Electronics  
     CBS Corp.  
     CBS Inc.  
 C.E. Bradley Laboratories, Inc.  
 Susan Bates, Inc.  
     C.J. Bates & Son  
     Coats & Clark Inc.  
 Moen Incorporated  
     Capewell Manufacturing Co.  
 Carris Reels, Inc.  
     Carris Reels of Connecticut, Inc.  
     Bridge Manufacturing Company  
 Chapman Machine Company  
 Newell Co.  
     Charles D. Burnes  
 Pfizer Inc.  
     Charles Pfizer & Co., Inc.  
     Amatek/Pfizer, Inc.  
 Conopco, Inc. d/b/a Chesebrough-Pond's Co.  
 Chromium Process Co.  
 Ciba Specialty Chemicals Corp.  
     Ciba-Geigy Corporation  
     Novartis Corporation  
     Hamblet & Hayes Co.  
 Circuit Wise, Inc.  
 Cly-DeI Manufacturing Co., Inc.  
 Coltec Industries Inc.  
 Compo Industries/Pandel Bradford Div.  
 Contromatic Corporation/Quamco, Inc.  
 Cooper Industries, Inc.  
     New England Die Casting  
     Dano Electric  
 Pratt-Read Corporation  
     Cornwall & Paterson Co.

## APPENDIX C

## LIST OF CONTRIBUTING SETTLING DEFENDANTS

Costar-Morningstar	ICI Americas
Combing Costar	Polyvinyl Chemical Industries
Combing Incorporated	United Finish Co.
Dana Corporation - Superior Electric	IMO Industries, Inc.
Danaher Corp.	Heim Company
Allen Mfg. Co.	Industrial Polymers & Chemicals, Inc.
Jacobs Mfg. Co., The	Ingersoll-Rand Company
Moore Drop Forge	Torrington Co., Special Products
Dexter Corp.	Fafnir Bearing
Chemical Coatings	Thomaston Spec. Tool
Digital Equipment Corp.	International Paper Company
E.I. du Pont deNemours and Company	Irving Tanning Co.
Durham Manufacturing Company, The	Hartland Tanning
E.A. Patten Company, The	Preco Corp.
Eastern Etching & Manufacturing Co., Inc.	Premoid Corp.
Eastern Chem-Lac Corp.	K.J. Quinn & Co., Inc.
Eastern Lacquer Corp.	PRC International, Inc.
Electrolux Corporation	Courtaulds Aerospace, Inc.
Espey Manufacturing Co.	Kanthal Corp.
Saratoga Industries	Kanthal Special Alloys Corp.
Espey Mfg. & Electronics Corp.	Kanthal Furnace Products, Inc.
MHC Inc.	Kanthal Corp.
Ferwall, Inc.	PPG Industries, Inc.
Carpin Manufacturing Inc.	PPG Architectural Finishes, Inc.
Ferrule Manufacturing Corp.	Keeler and Long Incorporated
Technographics, Inc.	L.C. Doane Company
Fitchburg Paper Company	Philips Electronics
The Fletcher-Terry Company	Lakewood Metal Products
FLEXcon Company, Inc.	Larson Tool & Stamping Co.
Gencorp Inc. - Bolta Products	Olig, Ltd.
General Chemical Corp.	Lea Manufacturing Company
General Motors Corp.	Leavens Manufacturing
Fisher Body Div.	Lewcott Corporation
Talley International Investment Corp.	Lewcott Chem & Plastics
General Time Corporation	Eli Sandman Co.
Gillette Company	Lilly Industries, Inc.
Gould Electronics Inc.	Lilly Varnish Co.
Gould Inc.	Lilly Chemical Products
Allied Control Co.	Lilly Industrial Coatings, Inc.
Clevite Corporation	Lindberg Corporation d/b/a Lindberg Heat Treating
GTE Operations Support Incorporated	New England Metallurgical
GTE Sylvania, Walimet East	Litton Industries, Inc.
GTE Sylvania Inc.	Decatone, Div. of Litton Ind.
H&H Screw Products Mfg. Co.	Winchester Electronics, Div. of Litton Sys.
Hazen Paper Company	Decatone Prod.
Carlyle Manufacturing Company, Inc.	Streaters, Inc.
Heminway & Bartlett Mfg., Co., The	Lunquist Tool & Mfg. Co., Inc.
Carlyle Industries Inc.	The Mead Corporation
Blumenthal/Lansing Co.	Morart Gravure Corporation
Hercules Incorporated	Hasboro, Inc.
Hitchiner Manufacturing Co., Inc.	Milton Bradley Co.
Metal Casting Technology, Inc.	Miniature Precision Bearing- MPB Corp.
Holyoke Card & Paper Co.	Solutia Inc.
Hoyt & Worthen Tanning Corp.	Monsanto Company
Hubbard-Hall Inc.	Monsanto Chemical
Hubbard Hall Chemical Company	

## APPENDIX C

## LIST OF CONTRIBUTING SETTLING DEFENDANTS

Napier Co.	Sequa Corporation
RLJC, Inc.	Casco Products Corp.
The Bliss Group	Shell Chemical Company
Nashua Corporation	Shell Oil Company
Parker Street Perforating Corp.	Sibley Company, The
f/k/a National Perforating Corp.	Honeywell Inc., Skinner Valve Division
New England Small Business Investment Company, Inc.	Sportsmen's Plastics, Inc.
New England Tape Co.	American Annuity Group, Inc.
Netco Extruded Plastics	STI Group, Inc.
The Newton-New Haven Company	Sprague Technologies, Inc.
Newton Industries of New Haven	SPELCO, Inc.
Parker Hannifin Corporation	Sprague Electric Co.
EIS Automotive Corp.	Stanadyne Automotive Corp.
Persons Majestic Mfg.	Stanadyne Inc.
Philipp Brothers Chemical	Summit Finishing Company, The
Pitney Bowes, Inc.	Superior Plating Company
Dictaphone Corp.	Cornell-Dubilier Electronics, Inc.
Platt & Lagonia Company	Tobe Deutschmann Corporation
Plymouth Rubber Co., Inc.	Technical Coatings Laboratory, Inc.
Polaroid Corporation	Tech Systems
BP Chemicals Inc. (BP America Inc.)	Technicraft-Tech Systems
Prophylactic Brush	McCord Winn
Raffi and Swanson Inc.	Textron-J.H. Winn, Inc.
Raytheon Company	Tillotson Pearson Corp
Raytheon Mfg.	Tillotson Rubber Co.
Clariant Corporation	Atlas Corporation
Reed Plastics	Titeflex, Inc.
Akzo Nobel Coatings Inc.	The Truesdale Company
Reliance Varnish Co.	Tyco International (US) Inc.
Kraft Foods, Inc.	Tyco Labs
Kraft General Foods, Inc.	Ludlow Specialty Papers
Sundown Vitamins	U.S. Electrical Motors
Rexall Chemical	Uncas Manufacturing Co.
Risdon-AMS (USA), Inc.	C & K Components, Inc.
Risdon Corp.	Unimax Switch Corporation
Eyelet Specialty Co, Inc.	Brunswick Corporation
Risdon Manufacturing Company	Union Hardware Division
Robertshaw Controls Co.- Milford Div.	Uniroyal Inc.
Rock of Ages Corporation	Naugatuck Footwear
Rock of Ages Capacitors	U.S. Rubber Co.
Rogers Corp.	Shoe Hardware
Olivetti Office U.S.A.	UNC Incorporated
Royal Business	United Nuclear Corp.
Royal Typewriter Co., Inc.	Timex Corporation
Roytype	United States (U.S.) Time Corp.
Royal McBee	Timex Enterprises, Inc.
Royal Screw Machine Products Company	Timex Products Corp.
Lockheed Martin Corporation	Timex Sales Corporation
Sanders Associated, Inc.	United Technologies Corp.-Hamilton Standard Div.
Saltire Industrial, Inc.	Hamilton Standard Div.
Scovill Inc.	NSI, Inc.,
Scovill Mfg. Co.	Norden Systems, Inc.
Scovill Fasteners, Inc.	United Tool & Die Company, The
Secondary Products, Inc.	R.T. Vanderbilt Company, Inc.
Wm Steinen Mfg. Co.	Vanderbilt Chemical Corporation
	Vulcan Electric Co.

**APPENDIX C****LIST OF CONTRIBUTING SETTLING DEFENDANTS**

W.E. Bassett Company, The  
Barnes Group Inc.  
    Wallace Barnes  
    Associated Spring Corporation  
    Barnes Group Inc.  
Waterbury Companies, Inc.  
    Talley Industries, Inc.  
Westfield Coatings Corp., Inc.  
    Westfield Chemical  
CBS Corporation  
    Westinghouse Electric Corporation  
Westvaco Corporation  
    U.S. Envelope  
Weymouth Art Leather Co.  
23 West Bacon Corp.  
    Whiting & Davis Co., Inc.  
Whittaker Corporation  
    Chemical Products Corporation  
    CPL Corporation  
    C.W. Haynes Laboratories, Inc.  
Worcester Chemical Distr. Corp.  
Cartec, Inc.  
    Worcester Taper Pin  
Wright Line, Inc.

\*All Parties listed are Contributing Settling Defendants.  
Parties are grouped together for comparison to  
EPA's original volumetric ranklist of Related Parties

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

**FILED**

2009 NOV 24 A 9 23

DISTRICT COURT

-----X  
 UNITED STATES OF AMERICA :  
 and STATE OF CONNECTICUT, :  
 :  
 Plaintiffs, :  
 :  
 v. :  
 :  
 TOWN OF SOUTHLINGTON, et al., :  
 :  
 Defendants. :  
 -----X

Civil No. 3:09-cv-1515 (SRU)

**CONSENT DECREE FOR REMEDIAL DESIGN  
AND REMEDIAL ACTION REGARDING  
OLD SOUTHLINGTON LANDFILL SUPERFUND SITE**



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### I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Old Southington Landfill Superfund Site (the "Site") in Southington, Connecticut, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Connecticut (the "State") on March 12, 2007 of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State has also filed a complaint against the Defendants in this Court alleging that the Defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and Conn. Gen. Stats. § 22a-451, for recovery of the response costs incurred by the State and for the recovery of the costs and expenses to be incurred by the State in investigating, containing, removing, monitoring, or mitigating pollution and contamination allegedly caused by the Defendants.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the United States Department of Interior and the United States National Oceanographic and Atmospheric Agency, and the State of Connecticut Department of Environmental Protection, by letter dated March 12, 2007 of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under State and Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

F. The Settling Defendants that have entered into this Consent Decree do not admit any liability to the Plaintiffs or any matter of fact or law relating to the Site or arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants or any claim by the State.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, by publication in the Federal Register on September 21, 1984, 49 Fed. Reg. 37083.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, the Town of Southington ("Town"), United Technologies Corp., Pratt & Whitney Division ("UTC"), and Solvents Recovery Service of New England ("SRSNE"), under EPA oversight, commenced the Remedial Investigation and Feasibility Study ("RI/FS") for the Site, pursuant to 40 C.F.R. § 300.430, on September 29, 1987. SRSNE later became insolvent

and suspended participation in the RI/FS. In 1989, General Electric Company agreed to participate in the performance of the RI/FS. The Remedial Investigation was completed on December 10, 1993. EPA issued an addendum to the RI/FS ("RI") Report on May 23, 1994. An amended Feasibility Study to address ground water contamination was completed on June 1, 2006, and a supplemental Remedial Investigation Study was approved on June 19, 2006.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the supplemental RI/FS and of the proposed plan for remedial action on June 14, 2006, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which EPA based the selection of the response action.

J. The decision by EPA on the groundwater remedial action to be implemented at the Site is embodied in a final Record of Decision, executed on September 29, 2006 ("2006 ROD") on which the State has given its concurrence. The 2006 ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

K. 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.

L. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the 2006 ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President, for which judicial review shall be limited to the Administrative Record.

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

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

## II. JURISDICTION

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

## III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the State and upon Settling Defendants and their heirs, successors, and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer

of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

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

"1994 ROD" shall mean the Record of Decision issued on September 28, 1994.

"2009 OSL *De Minimis* Settlement" shall mean the "2009 *De Minimis* Settlement Regarding Old Southington Landfill Superfund Site" to be filed with the United States District Court for the District of Connecticut.

"2009 OSL *De Minimis* Settlement Trust" shall mean the Old Southington Landfill Superfund Site Trust Account established by the Settling Defendants on May 27, 2009 at CitiGroup Global Markets/SmithBarney, to receive certain settlement and other payments regarding the Site from the parties to the 2009 OSL *De Minimis* Settlement.

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

"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.

"CTDEP" shall mean the Connecticut Department of Environmental Protection, which operates under the direction of the Commissioner of Environmental Protection as provided in Conn. Gen. Stat. § 22a-2 and pursuant to the powers enumerated in Conn. Gen. Stat. § 22a-6, and any successor departments or agencies of the State.

"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.

“DOI” shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 127.

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

“Future Oversight Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA and its representatives (including contractors) incur after the Effective Date in conducting the following activities: reviewing, discussing, commenting on and attending meetings related to plans, proposals, studies, reports or other items related to the Work; verifying the Work; and overseeing Settling Defendants’ implementation of the Work and compliance with the Consent Decree relating to the Work. Future Oversight Costs shall include, but not be limited to, payroll costs, costs incurred by EPA and its representatives (including contractors) under or in connection with a contract or arrangement for technical assistance in overseeing and reviewing the conduct of activities required under the Consent Decree, travel costs, laboratory costs, technical support costs, interagency and intergovernmental agreement costs (including ATSDR costs), costs under a cooperative agreement with the State, and data management costs, insofar as such costs are incurred for activities listed in the first sentence of this definition.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs after the Effective Date pursuant to the provisions of this Consent Decree other than those costs specifically included in the definition of Future Oversight Costs. Future Response Costs shall include but not be limited to costs incurred to enforce the Consent Decree (including dispute resolution); costs incurred pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls) (including the cost of attorney time and monies paid to secure access and/or to secure or implement institutional controls, including the amount of just compensation), XV (Emergency Response), and Paragraph 103 (Work Takeover) of Section XXI (Covenants by Plaintiffs); enforcement support costs; and accrued interest. Future Response Costs shall not include any costs incurred, including but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to the the Consent Decree regarding the Interim Remedy that was approved by the United States District Court of the District of Connecticut on June 9, 1998 in Civ. No. 3:98cv8 and on June 12, 1998 in Civ. No. 3:98cv236 (“1998 Consent Decree”), verifying the work under the 1998 Consent Decree, or otherwise implementing, overseeing, or enforcing the 1998 Consent Decree, and costs associated with the implementation of response actions relating in any way to the GA Area beyond those limited investigation activities described in and required by Section IV.D of the SOW or response actions related in any way to the former Lori Corp. property beyond those limited water level monitoring activities described in and required by Section IV.C.3.c. of the SOW.

“GA Area” shall mean the GA area as shown on the map attached as Attachment 1 to the SOW.

“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.

“Municipal solid waste” shall mean waste material: (a) generated by a household (including a single or multifamily residence); or (b) generated by a commercial, industrial or institutional entity, to the extent that the waste material (i) is essentially the same as waste normally generated by a household; (ii) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and (iii) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

“Natural Resources” shall mean “natural resources” as that term is defined in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Natural Resource Damages” shall mean damages for injury to, destruction of, or loss of natural resources relating to the Site, including the reasonable cost of assessing such damages, as provided in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C), and, for purposes of the State's claim shall also mean for damages for injury to, destruction of, or loss of natural resources relating to the Site, as provided in Conn. Gen. Stat. §§ 22a-6a and 22a-14 through 22a-20, inclusive.

“NR Trustees” shall mean the designated federal and state officials who may act on behalf of the public as trustees for the Natural Resources regarding the Site, namely the National Oceanic and Atmospheric Administration and DOI represented by the Fish and Wildlife Service as the federal Trustees for Natural Resources regarding the Site, and the Commissioner of CTDEP as the State trustee for Natural Resources.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Operation and Maintenance” or “O & M” shall mean that portion of the Work required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (“SOW”).

“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 Connecticut, and the Settling Defendants.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD and Section IV of the SOW.

“Plaintiffs” shall mean the United States and the State of Connecticut.

“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 “2006 ROD” shall mean the EPA Record of Decision relating to

the Site signed on September 29, 2006 by the Director, Office of Site Remediation and Restoration, EPA Region 1, and all attachments thereto. The 2006 ROD is attached as Appendix A.

“Remedial Action” shall mean the Work, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the 2006 ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

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

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

“Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 10 of this Consent Decree and approved by EPA, and any amendments thereto.

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

“Settling Defendants” shall mean the GenCorp Inc., Kraft Foods Global Inc., Shell Oil Company, Town of Southington, Connecticut, and United Technologies Corporation.

“Settling Federal Agencies” shall mean the following departments, agencies, and instrumentalities of the United States: United States General Services Administration and the United States Department of Defense, including the United States Department of the Army and the United States Department of the Navy, and their predecessor, component and successor agencies.

“Site” shall mean the Old Southington Landfill Superfund Site, encompassing approximately 13 acres of the former landfill located on the east side of Old Turnpike Road, in Southington, Hartford County, Connecticut as well as all areas where contamination from the landfill has come to be located in Southington, and depicted generally on the map attached as Appendix B and entitled “Figure 1-1 Study Area Old Southington Landfill Superfund Site.”

“State” shall mean the State of Connecticut.

“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 Site, as set forth in Appendix C to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Subparagraph” shall mean a portion of this Consent Decree identified by a lower case letter.

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

“Town” shall mean the Town of Southington, Connecticut.

“United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal

Agencies, and any federal NR Trustee.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any “pollutant or contaminant” under Section 101(33), 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous waste” under Sections 22a-449(c)-100 through 22a-449(c)-110 and Section 22a-449(c)-11 of the Regulations of Connecticut State Agencies and Conn. Gen. Stat. § 22a-115.

“Work” shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (“Retention of Records”). The Work does not include: (1) additional response actions relating in any way to the GA Area beyond those limited investigation activities described in and required by Section IV.D of the SOW; or (2) the “Pre-Design studies” at the former Lori Corp. property as such “Pre-Design studies” are described in Part 2, Section L.1.B.1.5. of the 2006 ROD. The Settling Defendants provided a report showing no hydraulic connection between the contaminated groundwater areas on the former Lori Corp. property and groundwater from the Old Southington Landfill. EPA concurred with the findings and determined that the “Pre-Design studies” at the former Lori Corp. property are completed and fully satisfy the ROD requirement.

#### V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants, to reimburse response costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Settling Defendants and the claims of the State and Settling Defendants which have been or could have been asserted against the United States with regard to this Site as provided in this Consent Decree.

6. Commitments by Settling Defendants and Settling Federal Agencies.

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the 2006 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 this Consent Decree. Settling Defendants shall also reimburse the United States for Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work under this Consent Decree, and to compensate the United States and the State for damages to Natural Resources are joint and several. In the event of the insolvency or other failure of one or more Settling Defendant to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

c. Settling Federal Agencies shall pay a share of the cost of the Work, EPA’s Future Response Costs and shall compensate the United States and the State for damages to Natural Resources under their trusteeship as provided for in 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 2006 ROD ("ARARs"). The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (*i.e.*, within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XVIII ("Force Majeure") 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.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI ("Performance of the Work by Settling Defendants"), VII ("Remedy Review"), VIII ("Quality Assurance, Sampling and Data Analysis"), and XV ("Emergency Response") 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 the State. Within ten days after the lodging of this Consent Decree, Settling Defendants shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP") or equivalent documentation as determined by EPA. The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

a. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA and the State 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. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within 21 days of EPA's authorization to proceed.

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

10. Remedial Design.

a. Consistent with the deadlines provided in the SOW, Settling Defendants shall submit to EPA and the State the deliverables required as part of the Remedial Design, as set forth in Section V of the SOW, including, but not limited to, a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the 2006 ROD, in accordance with the SOW, and for achievement of the Performance Standards and other requirements set forth in the 2006 ROD, this Consent Decree, and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Consistent with the deadlines provided in the SOW, the Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities 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. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall implement the activities required under the Remedial Design Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals, and other deliverables required under the approved Remedial Design 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, Settling Defendants shall not commence Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan. Upon approval by EPA of the other Remedial Design deliverables required under the SOW, Settling Defendants shall implement the activities required by such deliverables.

11. Remedial Action.

a. Consistent with the deadlines provided in the SOW, the Settling Defendants shall submit to EPA and the State the deliverables required as part of the Remedial Action, as set forth in Section VI of the SOW, including, but not limited to, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the 2006 ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the 2006 ROD, the SOW, and the design plans and specifications developed in

accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the 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. The Settling Defendants shall submit to EPA for approval all other Remedial Action plans, submittals, and deliverables described in the SOW, in accordance with the schedule set forth in the SOW and the approved Remedial Action Work Plan.

b. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, the Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action 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, Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan. Upon approval by EPA of the other Remedial Action deliverables required under the SOW, Settling Defendants shall implement the activities required by such deliverables.

12. The Settling Defendants shall continue to implement the Remedial Action and O & M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOW or Related Work Plans.

a. If EPA determines that modification to the Work specified in the SOW and/or in 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 2006 ROD, EPA shall notify the Settling Defendants in writing and 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 2006 ROD. EPA will confer with the Settling Defendants prior to requiring a modification of the SOW or of the work plans developed pursuant thereto.

b. For the purposes of this Paragraph 13 and Paragraphs 51 and 52 only, the "scope of the remedy selected in the 2006 ROD" shall mean the actions described in Section L of the 2006 ROD, including, but not limited to, the following: (1) Institutional Controls in the form of Environmental Land Use Restrictions as defined by CT RSRs; (2) Building Ventilation (subslab depressurization systems or similar technology) in existing buildings and controlling vapors in new buildings; (3) Groundwater monitoring; (4) Operating, maintaining and monitoring engineering and institutional controls; and (5) Conducting five year reviews, all as provided in Section III of the SOW.

c. If the 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").

d. Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW 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 Design or 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. a. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to a waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten cubic yards or the equivalent in liquid units.

(1) The 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 is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling 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.

(2) The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Settling Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3) and 40 C.F.R. 300.440.

#### VII. REMEDY REVIEW

16. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations. EPA will confer, in good faith, with the Settling Defendants before requiring the performance of such studies and investigations.

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 Site in accordance with the requirements of CERCLA and the NCP.

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 Site, other than response actions relating in any way to the GA Area and/or response actions related in any way to the former Lori Corp. property, the Settling Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 93 or Paragraph 94 (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 93 or Paragraph 94 of Section XXI ("Covenants by Plaintiffs") 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 Section XIX (Dispute Resolution) Paragraph 74.

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

#### VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), "EPA New England Quality Assurance Project Plan Program Guidance," April 2005, and subsequent amendments to such guidelines upon notification by EPA to the Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any sampling or monitoring project under this Consent Decree, the Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Sampling and Analysis Plan ("SAP"), which includes, among other things, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance documents. 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 Consent Decree. Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent 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 Organic Analysis" (Multi-Media, Multi-Concentration Organics Analysis, SOMO1.1, which can be found at <http://www.epa.gov/superfund/programs/clp/som1.htm>) and the "Contract Lab Program Statement of Work for Inorganic Analysis," (Multi-Media, Multi-Concentration Inorganic Analysis, ILM05.3, which can be found at <http://www.epa.gov/superfund/programs/clp/ilm5.htm>) and any amendments made thereto during the course of the implementation of this Consent Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Defendants may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Defendants shall contractually require all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall only use laboratories that have a documented Quality System which complies with ANSI/ASQ E4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use," and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Defendants shall notify EPA and the State not less than 28 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 EPA or the State deem necessary. Upon request, EPA and the State shall allow the Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Settling Defendants' implementation of the Work and shall provide Settling Defendants with copies of all sampling data.

23. Settling Defendants shall submit two copies to EPA and two copies to the State of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree, unless EPA specifies or the approved QAPP provides for another number of copies.

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 AND INSTITUTIONAL CONTROLS

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

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA and its contractors, with access

at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 103 ("Work Takeover");
- (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");
- (9) Assessing Settling Defendants' compliance with this Consent Decree; and
- (10) Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree.

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, (1) prohibiting activities that could harm the capped areas of the Site; (2) prohibiting use of contaminated groundwater; (3) prohibiting activities that could result in exposure to contaminants in the subsurface soils and groundwater; and (4) ensuring that any new structures on the Site will be constructed to minimize potential risk of inhalation of contaminants.

c. execute and record with the Town Clerk, Town of Southington, County of Hartford, State of Connecticut, an easement and environmental land use restriction, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25.b, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its

representatives, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

(1) A draft easement and environmental land use restriction, in substantially the form attached hereto as Appendix D, that is enforceable under the laws of the State of Connecticut, and

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

Within 15 days of EPA's approval and acceptance of the easement and title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Town Clerk, Town of Southington, County of Hartford, State of Connecticut. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

26. Consistent with the deadlines provided in the SOW, if the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, the Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for the 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;

b. an agreement, enforceable by the Settling Defendants and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, those listed in Paragraph 25(b); and

c. the execution and recordation with the Town Clerk, Town of Southington, County of Hartford, State of Connecticut, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed



pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Within 45 days of entry of this Consent Decree, Settling Defendants shall submit to EPA for review and approval with respect to such property:

- (1) A draft easement, in substantially the form attached hereto as Appendix D, that is enforceable under the laws of the State of Connecticut, and
- (2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within 15 days of EPA's approval and acceptance of the easement and the title evidence, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement shall be recorded with Town Clerk, Town of Southington, County of Hartford, State of Connecticut. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

27. Consistent with the deadlines provided in the SOW, and for purposes of Paragraphs 25 and 26, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 26.a or 26.b are not obtained by the deadlines provided in the SOW, (b) any access easements or restrictive easements required by Paragraph 26.c are not submitted to EPA in draft form by the deadlines provided in the SOW, or (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph 25.c(1) or Paragraph 26.c(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this Consent Decree by the deadlines provided in the SOW, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 25 or 26. At the request of Settling Defendants, the United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI ("Payments for Response Costs"), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation. If, after having satisfied "best efforts" the Settling Defendants cannot obtain a release or subordination of

the outstanding liens on account of unpaid taxes, easements, or existing mortgages on the Chuck & Eddies, Radio Station, or the Highland Hills Subdivision properties, the Settling Defendants shall seek a waiver from the State pursuant to Conn. Gen. Stat. Section 22a-133o.

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 2006 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, Settling Defendants shall submit two copies to EPA and two copies to the State (or such other number of copies, if specified by EPA) of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 52.b of Section XIV ("Certification of Completion"). If requested by EPA or the State, Settling Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work. As provided in the SOW, monthly progress reporting will terminate as of the date of EPA approval of the final Construction Completion Report, which triggers commencement of the O & M period. O & M reporting will occur through submission of those reports specified in the SOW.

31. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, 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 Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the

Emergency Planning and Community Right-to-Know Act ("EPCRA"), Settling Defendants shall, no later than the time required for any notification under Section 103(a) of CERCLA or Section 304(b) of EPCRA, 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 1, 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 time required for a notification of such an event under Section 103(a) of CERCLA or Section 304(b) of EPCRA, Settling Defendants shall furnish to Plaintiffs a written report, signed by the 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 or the time required for a notification of such an event under Section 103(a) of CERCLA or Section 304(b) of EPCRA, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

34. Settling Defendants shall submit two copies (or such other number of copies, if specified by EPA) of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit two copies of all such plans, reports, and data to the State. Upon request by EPA, Settling Defendants shall submit in electronic form all portions of any report or other deliverable. Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

35. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the 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, based upon the submission's consistency with the ROD, SOW and applicable work plans as determined by EPA: (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 21 days, 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. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendants 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, 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 overturned 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 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 ten days of lodging this Consent Decree, Settling Defendants, the State 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 five working days before the changes occur,

unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The 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 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 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 and the Settling Defendants' Project Coordinator will meet in person or by telephone, at a minimum, on a monthly basis.

### XIII. PERFORMANCE GUARANTEE

45. In order to ensure the full and final completion of the Work, one or more of the Settling Defendants shall establish and maintain a Performance Guarantee for the benefit of EPA in the total amount of \$695,000 (hereinafter "Estimated Cost of the Work") in one or more of the following forms, which must be satisfactory in form and substance to EPA:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on Federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a U.S. Federal or State agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a U.S. Federal or State agency;

d. A policy of insurance that (i) provides EPA with acceptable rights as a beneficiary thereof; and (ii) is issued by an insurance carrier (a) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (b) whose insurance operations are regulated and examined by a State agency;

e. A demonstration that one or more Settling Defendants satisfy the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work, provided that all other requirements of 40 C.F.R. § 264.143(f) are satisfied;

f. Evidence as provided by the Town of Southington's referendum for its share of the cost of the Work; or

g. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Settling Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test requirements of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work that it proposes to guarantee hereunder.

46. Settling Defendants have selected, and EPA has approved, as the Performance Guarantee pursuant to Paragraph 45, the 2009 OSL *De Minimis* Trust, and the trust agreement for such Trust is attached as Appendix E. Settling Defendants have submitted all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Cincinnati Financial Office in accordance with Section XXVI ("Notices and Submissions"), with a copy to the Regional Financial Assurance Specialist, the United States, EPA, and the State as specified in Section XXVI.

47. If at any time during the effective period of this Consent Decree, the Settling Defendants provide a Performance Guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 45(e) or Paragraph 45(f) above, such Settling Defendant shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f), 40 C.F.R. § 264.151(f), and 40 C.F.R. § 264.151(h)(1) relating to these methods unless otherwise provided in this Consent Decree, including but not limited to: (i) the initial submission of required financial reports and statements from the relevant entity's chief financial officer and independent certified public accountant; (ii) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (iii) the notification of EPA within 90 days after the close of any fiscal year in which such entity no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1). For purposes of the Performance Guarantee methods specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to refer to the Work required under this Consent Decree, and the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to refer to the Estimated Cost of the Work.

48. In the event that EPA determines at any time that a Performance Guarantee provided by any Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Defendant becomes aware of information indicating that a Performance Guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Defendants, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of any Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of Performance Guarantee listed in Paragraph 45 that satisfies all requirements set forth in this Section XIII. In seeking approval for a revised or alternative form of Performance Guarantee,

Settling Defendants shall follow the procedures set forth in Paragraph 50.b.(2). Settling Defendants' inability to post a Performance Guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling Defendants to complete the Work in strict accordance with the terms hereof.

49. The commencement of any Work Takeover pursuant to Paragraph 103 shall trigger EPA's right to receive the benefit of any Performance Guarantee(s) provided pursuant to Paragraphs 45(a), (b), (c), (d), or (f), and at such time EPA shall have immediate access to resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. If for any reason EPA is unable to promptly secure the resources guaranteed under any such Performance Guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or in the event that the Performance Guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 45(e), Settling Defendants shall immediately upon written demand from EPA deposit into an account specified by EPA, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed as of such date, as determined by EPA.

50. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Settling Defendants believe that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 45, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the Performance Guarantee provided pursuant to this Section so that the amount of the Performance Guarantee is equal to the estimated cost of the remaining Work to be performed. Settling Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the cost of the remaining Work to be performed and the basis upon which such cost was calculated. In seeking approval for a revised or alternative form of Performance Guarantee, Settling Defendants shall follow the procedures set forth in Paragraph 50.b.(2). If EPA decides to accept such a proposal, EPA shall notify the petitioning Settling Defendants of such decision in writing. After receiving EPA's written acceptance, Settling Defendants may reduce the amount of the Performance Guarantee in accordance with and to the extent permitted by such written acceptance. In the event of a dispute, Settling Defendants may reduce the amount of the Performance Guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute. No change to the form or terms of any Performance Guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraph 50.b.

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Settling Defendants desire to change the form or terms of any Performance Guarantee(s) provided pursuant to this Section, Settling Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form of the Performance Guarantee provided hereunder. The submission of such

proposed revised or alternative form of Performance Guarantee shall be as provided in Paragraph 50.b.(2). Any decision made by EPA on a petition submitted under this Subparagraph b.(2) shall, after considering the estimated cost of the remaining work to be performed, be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Settling Defendants shall submit a written proposal for a revised or alternative form of Performance Guarantee to EPA which shall specify, at a minimum, the estimated cost of the remaining Work to be performed, the basis upon which such cost was calculated, and the proposed revised form of Performance Guarantee, including all proposed instruments or other documents required in order to make the proposed Performance Guarantee legally binding. The proposed revised or alternative form of Performance Guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Defendants shall submit such proposed revised or alternative form of Performance Guarantee to the EPA Cincinnati Financial Office, with a copy to the Regional Financial Assurance Specialist in accordance with Section XXVI ("Notices and Submissions"). EPA shall notify Settling Defendants in writing of its decision to accept or reject a revised or alternative Performance Guarantee submitted pursuant to this Subparagraph. Within ten days after receiving a written decision approving the proposed revised or alternative Performance Guarantee, Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such Performance Guarantee(s) shall thereupon be fully effective. Settling Defendants shall submit all executed and/or otherwise finalized instruments or other documents required in order to make the selected Performance Guarantee(s) legally binding to the EPA Cincinnati Financial Office within 30 days of receiving a written decision approving the proposed revised or alternative Performance Guarantee in accordance with Section XXVI ("Notices and Submissions"), with copies to the Regional Financial Assurance Specialist, the United States, EPA, and the State as specified in Section XXVI.

c. Release of Performance Guarantee. If Settling Defendants receive written notice from EPA in accordance with Paragraph 51 that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Defendants in writing, Settling Defendants may thereafter release, cancel, or discontinue the Performance Guarantee(s) provided pursuant to this Section. Settling Defendants shall not release, cancel, or discontinue any Performance Guarantee provided pursuant to this Section except as provided in this Paragraph. In the event of a dispute, Settling Defendants may release, cancel, or discontinue the Performance Guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute.

#### XIV. CERTIFICATION OF COMPLETION

##### 51. Completion of the Remedial Action.

- a. Within 90 days after Settling Defendants conclude that the Remedial



Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI ("EPA Approval of Plans and Other Submissions") within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the 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 Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the 2006 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 the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI ("EPA Approval of Plans and Other Submissions"). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX ("Dispute Resolution").

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

52. Completion of the Work.

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants, EPA, and the State. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the 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 has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the 2006 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 the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI ("EPA Approval of Plans and Other Submissions"). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX ("Dispute Resolution").

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

XV. EMERGENCY RESPONSE

53. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 54, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region 1. 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 Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State take such action instead, 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").

54. 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 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 Site, subject to Section XXI ("Covenants by Plaintiffs").

#### XVI. PAYMENTS

##### 55. Payment by Settling Defendants for Future Oversight Costs

a. Within 30 days of the Effective Date, Settling Defendants shall pay to EPA \$500,000 in payment for Future Oversight Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing the USAO File Number, EPA Site/Spill ID Number 01-58, and DOJ Case Number 90-11-2-420/5. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the District of Connecticut 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, Settling Defendants shall send notice that payment has been made to the United States, to EPA, and to the EPA Cincinnati Financial Office, in accordance with Section XXVI ("Notices and Submissions").

c. The total amount to be paid by Settling Defendants pursuant to Paragraph 55 shall be deposited in the Old Southington Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

##### 56. Payments by Settling Defendants for Future Response Costs.

a. Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan. On a periodic basis the United States will send Settling Defendants a bill requiring payment that consists of a Region 1 standard cost summary, which is a line-item summary of costs in dollars by category of costs (including but not limited to payroll, travel, indirect costs, and contracts) incurred by EPA and DOJ and their contractors. Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 57. 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 Site/Spill ID Number 01-58, and DOJ Case Number 90-11-

2-420/5. Settling Defendants shall send the check(s) to:

(For Delivery by First Class Mail)  
U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

(For Delivery by Overnight Mail)  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

b. At the time of payment, Settling Defendants shall send notice that payment has been made to the United States, to EPA, and to the EPA Cincinnati Financial Office, in accordance with Section XXVI ("Notices and Submissions");-

c. The total amount to be paid by Settling Defendants pursuant to Subparagraph 56.a shall be deposited in the Old Southington Landfill Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

57. Settling Defendants may contest payment of any Future Response Costs under Paragraph 56 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVI ("Notices and Submissions"). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 56. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Connecticut and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXVI ("Notices and Submissions"), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX ("Dispute Resolution"). If the United States prevails in the dispute, within five days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 56. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner

described in Paragraph 56; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX ("Dispute Resolution") shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

58. In the event that the payments required by Paragraph 55 are not made within 30 days of the Effective Date or the payments required by Paragraph 56 are not made within 30 days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on the payment for Future Oversight Costs under this Paragraph shall begin to accrue 30 days after the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the 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 Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 79. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 56.

59. Payment by Settling Federal Agencies. As soon as reasonably practical as of the Effective Date, the United States, on behalf of the Settling Federal Agencies, shall cause \$507,960.23 to be paid to United Technologies Corporation ("UTC"). This payment is for Settling Federal Agencies' share of the estimated cost of the Work, Future Response Costs and Natural Resource Damages, including premiums to cover the risk of cost overruns and other contingencies, and a premium to cover the risk that additional work may be required in the Highland Hills subdivision west of the Site. The payment to UTC shall be made by check made payable to UTC or by wire in accordance with the wiring instructions specified by UTC.

60. In the event that payment required by Paragraph 59 is not made within 120 days of the Effective Date, Interest on the unpaid balance shall be paid commencing on the 121<sup>st</sup> day following the Effective Date and accruing through the date of the payment.

61. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

62. Payment by Settling Defendants for Federal Natural Resource Damages. Within 30 days of the Effective Date, Settling Defendants shall pay \$537,000 to DOI for Natural Resource Damages. Of this amount, \$13,455.85 is to reimburse the DOI for past assessment costs and \$523,544.15 is for natural resource damages and is to be spent for restoration, replacement or acquisition of the equivalent of the natural resource injuries associated with the Site, including planning, oversight, monitoring, and other allowable expenditures associated with such restoration, replacement or acquisition. Payment to DOI shall be made in accordance with instructions provided by DOI after the Effective Date. Notice that this payment has been made shall be sent to: Department of the Interior, Natural Resource Damage Assessment and Restoration Fund, Attn: Restoration Fund Manager, 1849 C Street, N.W., Washington, DC

20240.

63. Payment by Settling Defendants for State Natural Resource Damages. Settling Defendants shall pay \$2,750,000 to the State for Natural Resource Damages for the permanent loss of use of groundwater due to the alleged actions of the Settling Defendants. Of this amount, \$2,329,433.33 shall be paid within 30 days of the Effective Date. The Town shall pay its allocated share of the State NRD payment in annual installments without interest. The Town's first installment is included in the total described in the second sentence of this Paragraph. The Town's second installment of \$210,283.33 shall be due one year from the Effective Date and the Town's third installment shall be due two years from the Effective Date. All payments to the State shall be made by check made payable to "Treasurer, State of Connecticut" and delivered to the attention of the undersigned counsel for the State at the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106.

#### XVII. INDEMNIFICATION AND INSURANCE

64. 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 (with the exception of the Settling Federal Agencies), 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 (with the exception of the Settling Federal Agencies) 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 Paragraph 64, and shall consult with Settling Defendants prior to settling such claim.

65. 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 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 Site, including, but not limited to, claims on account of construction delays.

66. No later than 15 days before commencing any on-Site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 51.b of Section XIV ("Certification of Completion") comprehensive general liability insurance with limits of three million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States and the State as additional insureds. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If 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, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

#### XVIII. FORCE MAJEURE

67. "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.

68. 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 Office of Site Remediation & Restoration, EPA Region 1, within 24 hours of when the Settling Defendants first knew that the event might cause a delay. Settling Defendants also shall notify orally the State's Project Coordinator, or in his or her absence, Gennady Shteynberg, within 48 hours of when Settling Defendants first knew that the event might cause a delay. Within five business 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 Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

69. 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, and the resulting delay shall not be deemed to be a violation of this Consent Decree. 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.

70. 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 denying the applicability of force majeure. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 67 and 68, 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

71. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between EPA and Settling Defendants or between the State and Settling Defendants arising under or with respect to this Consent Decree. The procedures for resolution of disputes which involve EPA are governed by Paragraphs 72 to 76. The State may participate in such dispute resolution proceedings to the extent specified in Paragraphs 72 through 76. Disputes exclusively between the State and Settling Defendants are governed by Paragraph 77. However, the



procedures set forth in this Section shall not apply 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.

72. 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.

73. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 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 74 or Paragraph 75.

b. Within 21 days after receipt of Settling Defendants' Statement of Position, EPA, after reasonable opportunity for review and comment by the State, will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 74 or 75. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 74 or 75, 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 74 and 75.

74. 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 2006 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 Settling Defendants, EPA or the State.

b. The Director of the Office of Site Remediation & Restoration, EPA Region 1, will issue, after reasonable opportunity for review and comment by the State, a final administrative decision resolving the dispute based on the administrative record described in Paragraph 74.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 74.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 74.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 ten days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office of Site Remediation & Restoration 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 74.a.

75. 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 73, the Director of the Office of Site Remediation & Restoration, EPA Region 1, after reasonable opportunity for review and comment by the State, will issue a final decision resolving the dispute. The decision of the Director of the Office of Site Remediation & Restoration shall be binding on the Settling Defendants unless, within 20 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 M of Section I ("Background"), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

76. 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, after reasonable opportunity for review and comment by the State, 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 86. 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").

77. Disputes Solely Between the State and Settling Defendants. Disputes arising under the Consent Decree between the State and Settling Defendants assessment of stipulated penalties and the adequacy of access and institutional controls following any assignment of a grant of environmental restrictions from the United States to the State, shall be governed in the following manner. The procedures for resolving the disputes mentioned in this Paragraph shall be the same as provided for in Paragraphs 72 to 76, except that each reference to EPA shall read as a reference to CTDEP, each reference to the Director of the Office of Site Remediation & Restoration, EPA Region 1, shall be read as a reference to Director of Permitting, Enforcement, Remediation Division, CTDEP, and each reference to the United States shall be read as a reference to the State.

#### XX. STIPULATED PENALTIES

78. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 79 and 80 to the United States and the State for failure to comply with the requirements of this Consent Decree specified below following the Effective Date of this Consent Decree, unless excused under Section XVIII ("Force Majeure") or by resolution of Dispute Resolution (Section XIX) in Settling Defendants' favor. Settling Defendants shall pay 90% of stipulated penalties to the United States, and shall pay 10% of stipulated penalties to the State in accordance with the requirements of Paragraph 84. "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 or the State pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

79. The following stipulated penalties shall accrue per violation per day for any noncompliance except those identified in Paragraph 80:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 2,000	1st through 14th day
\$ 5,000	15th through 30th day
\$ 7,500	31st day and beyond

80. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports pursuant to Paragraph 30, Section X of the Consent Decree:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$ 1,000	15th through 30th day
\$ 2,500	31st day and beyond

81. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 103 of Section XXI ("Covenants by Plaintiffs"), Settling Defendants shall

be liable for a stipulated penalty in the amount of \$250,000.

82. 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 Office of Site Remediation & Restoration, EPA Region 1, under Paragraphs 74.b or 75.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.

83. Following EPA's determination, after a reasonable opportunity for review and comment by the State, that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA, or EPA and the State jointly, may send Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA, or the State for violations specified in Paragraph 87, has notified Settling Defendants of a violation.

84. All penalties accruing under this Section shall be due and payable to the United States and/or the State within 30 days of Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX ("Dispute Resolution"). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to EPA Cincinnati Financial Office, 26 Martin Luther King Drive, Cincinnati, OH 45268, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 01-58, the DOJ Case Number 90-11-2-420/5, and the name and address of the party making payment. All payments to the State under this Section shall be made payable to Treasurer, State of Connecticut, and shall be mailed to the Office of the Attorney General, 55 Elm Street, Hartford, Connecticut 06106 Attn: Environment Department. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States and to the State as provided in Section XXVI ("Notices and Submissions").

85. 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.

86. Penalties shall continue to accrue as provided in Paragraph 82 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 and the

State 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 and the State 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 or the State 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 and the State or to Settling Defendants to the extent that they prevail.

87. State Assessment of Stipulated Penalties. Assessment of stipulated penalties by the State shall be governed in the following manner. Following the State's determination that Settling Defendants have failed to submit payment to the State as required under Paragraph 63, the State may, after reasonable opportunity for review and comment by EPA, give Settling Defendants written notification of the same and describe the noncompliance. The provisions for liability, assessment and payment of the stipulated penalties referenced in this Paragraph shall be the same as provided in Paragraphs 81 to 89, except that in Paragraph 86 excluding the last sentence of that Paragraph, and in Paragraph 89, each reference to EPA shall read as a reference to CTDEP, each reference to the United States shall be read as a reference to the State, each reference to the State shall be read as a reference to the United States, and each reference to the State's reasonable opportunity to review and comment shall read as EPA's reasonable opportunity for review and comment. For penalties assessed under this Paragraph, the Settling Defendants shall pay 90% to the State, and shall pay 10% to the United States in accordance with the requirements of Paragraph 78.

88. If Settling Defendants fail to pay stipulated penalties when due, the United States or the State 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 82.

89. 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 Consent 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.

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

## XXI. COVENANTS BY PLAINTIFFS

91. United States' Covenant for Settling Defendants. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 93, 94, and 102 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA 42 U.S.C. §§ 9606 and 9607, or Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site, including Natural Resource Damages. Except with respect to future liability, these covenants not to sue shall take effect upon the Effective Date. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 51.b of Section XIV ("Certification of Completion"). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

92. Covenant for Settling Federal Agencies. In consideration of the payment that will be made by the Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraphs 93, 94, and 102 of this Section, EPA and the federal NR Trustees covenant not to take administrative action against the Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA, or Section 7003 of RCRA, 42 U.S.C. § 6973, relating to the Site, including Natural Resource Damages. Except with respect to future liability, these covenants shall take effect upon the receipt of the payment required by Paragraph 59 of Section XVI ("Reimbursement of Response Costs"). With respect to future liability, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 51.b of Section XIV ("Certification of Completion"). These covenants are conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. These covenants extend only to the Settling Federal Agencies and do not extend to any other person.

93. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies,

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:
  - (1) conditions at the Site, previously unknown to EPA, are discovered,or
  - (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

94. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies,

- a. to perform further response actions relating to the Site, or
- b. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:
  - (1) conditions at the Site, previously unknown to EPA, are discovered,
 or
  - (2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

95. For purposes of Paragraph 93, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the 2006 ROD was signed and set forth in the 1994 ROD and the 2006 ROD for the Site and the administrative record supporting the 1994 ROD and the 2006 ROD and that information and those conditions known to EPA as set forth in the additional groundwater data and data related to the former Lori Corp. property submitted in writing to EPA prior to the date of lodging this Consent Decree. For purposes of Paragraph 94, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the 1994 ROD and the 2006 ROD, the administrative record supporting the 1994 ROD and the 2006 ROD, the post-1994 ROD and the post-2006 ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

96. State's Covenant Not to Sue the Settling Defendants and the Settling Federal Agencies. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants and the payment that will be made by the Settling Federal Agencies under the terms of the Consent Decree, and except as specifically provided in Paragraph 102 of this Section, the State covenants not to sue or to take administrative action against Settling Defendants and the Settling Federal Agencies pursuant to Sections 107(a) of CERCLA, Conn. Gen. Stat. §§22a-432, 22a-451, 22a-6a, or 22a-14 through 22a-20 relating to the Site, including Natural Resources Damages. These covenants shall take effect upon receipt of the payment required by Paragraph 59. These covenants are conditioned upon the satisfactory performance by the Settling Defendants and the Settling Federal Agencies of their obligations under this Consent Decree. These covenants extend only to the Settling Defendants and the Settling Federal Agencies and do not extend to any other person.

97. State's Pre-Certification Reservations. Notwithstanding any other provisions of this Consent Decree, the State on behalf of CTDEP, reserves, and this Consent Decree is without

prejudice to, any right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to, Conn. Gen. Stat. §§ 22a-6a, 22a-432, 22a-451, or 22a-14 through 22a-20 seeking to compel all or any of the Settling Defendants and the Settling Federal Agencies (1) to perform other response actions at the Site, or (2) to reimburse the State for additional response costs for response actions at the Site, to the extent that EPA has determined that such response actions required under (1) and (2) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, prior to Certification of Completion of the Remedial Action:

- (i) conditions at the Site, previously unknown to the State, are discovered or become known to the State, or
- (ii) information previously unknown to the State is received by the State, in whole or in part,

and the CTDEP determines, under any applicable State law, including, but not limited to, Conn. Gen. Stat. §§22a-6a, 22a-432, 22a-451, or 22a-14 through 22a-20 based on these previously unknown conditions or this information together with any other relevant information that the response actions taken are not protective of health, safety, public welfare or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

98. State's Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the State, on behalf of CTDEP, reserves, and this Consent Decree is without prejudice to, the right jointly with, or separately from, the United States to institute proceedings in this action or in a new action under Section 107 of CERCLA, 42 U.S.C. § 9607, or under any applicable State law, including but not limited to, Conn. Gen. Stat. §§ 22a-6a, 22a-432, 22a-451, or 22a-14 through 22a-20 seeking to compel all or any of the Settling Defendants and the Settling Federal Agencies (1) to perform other response actions at the Site, or (2) to reimburse the State for additional response costs for response actions at the Site, to the extent that EPA has determined that such response actions required under (1) and (2) above in this Paragraph will not significantly delay or be inconsistent with the Remedial Action, if, subsequent to Certification of Completion of Remedial Action:

- (i) conditions at the Site, previously unknown to the State, are discovered or become known to the State after the Certification of Completion, or
- (ii) information previously unknown to the State is received by the State, in whole or in part, after the Certification of Completion,

and the CTDEP determines, under any applicable State law, including, but not limited to, Conn. Gen. Stat. §§22a-6a, 22a-432, 22a-451, or 22a-14 through 22a-20 based on these previously unknown conditions or this information together with any other relevant information that the response actions taken are not protective of health, safety, public welfare or the environment. The United States reserves all rights it may have under applicable law, to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.



99. For purposes of Paragraph 97, the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date the 2006 ROD was signed and set forth in the 1994 ROD and the 2006 ROD for the Site and the administrative record supporting the 1994 ROD and the 2006 ROD and that information and those conditions known to the State as set forth in the additional groundwater data and data related to the former Lori Corp. property submitted in writing to the State prior to the date of lodging this Consent Decree. For purposes of Paragraph 98, the information and the conditions known to the State shall include only that information and those conditions known to the State as of the date of Certification of Completion of the Remedial Action and set forth in the 1994 ROD and the 2006 ROD, the administrative record supporting the 1994 ROD and the 2006 ROD, the post-1994 ROD and the post-2006 ROD administrative record, or in any information received by the State pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

100. Notwithstanding any other provision of this Consent Judgment, the United States and the State reserve, and this Consent Decree is without prejudice to, the right to institute civil or administrative proceedings, as applicable, against Settling Defendants in this action or in a new action, and the federal NR Trustees and the State reserve, and this Consent Decree is without prejudice to, the right to institute civil or administrative proceedings, as applicable, against Settling Federal Agencies: seeking recovery of Natural Resource Damages, including costs of damage assessment, under Section 107 of CERCLA, if, after the Effective Date:

a. conditions at the Site, previously unknown to the NR Trustees, are discovered and are found to result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources; or

b. information previously unknown to the NR Trustees is received, and the United States or the State determines that the new information together with other relevant information indicate that releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of Natural Resources of a type that was unknown to the NR Trustees as of the date of lodging of the Consent Decree.

101. For purposes of the preceding Paragraph, the information and conditions known to the NR Trustees shall include only the information and conditions (a) known to the NR Trustees as of the date of lodging of this Consent Decree and (b) set forth in (i) the administrative record as of the date of lodging of this Consent Decree or (ii) additional groundwater data and data related to the former Lori Corp. property, submitted to the EPA and the State in writing prior to the date of lodging this Consent Decree.

102. General reservations of rights. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA and the federal NR Trustees and the State reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants, and EPA and the federal NR Trustees reserve all rights against Settling Federal Agencies, with respect to:

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

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

c. liability based upon the Settling Defendants' or Settling Federal Agencies' ownership or operation of the Site, or upon the Settling Defendants' or the Settling Federal Agencies' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the 2006 ROD, the Work, or otherwise ordered by EPA, that occurs after signature of this Consent Decree by the Settling Defendants;

d. criminal liability;

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

f. 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

g. liability regarding response actions relating in any way to the GA Area beyond those limited investigation activities described in and required by Section IV.D of the SOW and liability regarding response actions related in any way to the former Lori Corp. property beyond those limited water level monitoring activities described in and required by Section IV.C.3.c. of the SOW.

103. Work Takeover.

a. In the event EPA determines that Settling Defendants have (i) ceased implementation of any portion of the Work, or (ii) are seriously or repeatedly deficient or late in their performance of the Work, or (iii) are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Defendants a period of ten days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the ten-day notice period specified in the previous Paragraph, Settling Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph.

c. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 74, to dispute EPA's implementation of a Work Takeover under the previous Paragraph. However, notwithstanding Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under the previous Paragraph until the

earlier of (i) the date that Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XIX ("Dispute Resolution"), Paragraph 74.b, requiring EPA to terminate such Work Takeover.

d. After commencement and for the duration of any Work Takeover, EPA shall have immediate access to and benefit of any performance guarantee(s) provided pursuant to Section XIII, in accordance with the provisions of Paragraph 49 of that Section. If and to the extent that EPA is unable to secure the resources guaranteed under any such performance guarantee(s) and the Settling Defendants fail to remit a cash amount up to but not exceeding the estimated cost of the remaining Work to be performed, all in accordance with the provisions of Paragraph 49, any unreimbursed costs incurred by EPA in performing Work under the Work Takeover shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI ("Payment for Response Costs").

104. 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 AND SETTLING FEDERAL AGENCIES

105. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 109, 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 Site or this Consent Decree, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or
- c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Connecticut State 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.
- d. any claim against the State, including any department, agency or instrumentality of the State, under Conn. Gen. State §22a-452, related to the Site.

106. UTC acknowledges that it is a past and current party to certain government contracts, and certifies that no costs for the Work or federal Natural Resource Damages paid by Settling Federal Agencies pursuant to this Consent Decree have been or will be billed to any department, agency, or instrumentality of the United States, under overhead pools and allocation bases used for cost allocation to government contracts.

107. Covenants by Settling Federal Agencies. Settling Federal Agencies hereby agree not to assert 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 with respect to

the Site, past response actions and Future Response Costs as defined herein or this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

108. Except as provided in Paragraph 113 ("Waiver of Claims Against *De Minimis* Parties") and Paragraph 118 ("Waiver of Claim-Splitting Defenses"), the covenants not to sue in this Section shall not apply in the event that the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 93, 94, 97, 98, 102(b) - (d) or 102(g), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

109. The Settling Defendants reserve, and this Consent Decree is without prejudice to: (a) claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling 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; and (b) contribution claims against the Settling Federal Agencies in the event any claim is asserted by the United States or the State against the Settling Defendants under the authority of or under Paragraphs 93, 94, 97, 98 or 102(b) - (d) or 102(g) of Section XXII ("Covenants by Plaintiffs"), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States or the State against Settling Defendants.

110. 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).

111. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste ("MSW") at the Site, if the volume of MSW disposed, treated or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

112. The waiver in Paragraph 111 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Settling

Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines that: (a) the MSW contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or § 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927; or (c) the person impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

113. Waiver of Claims Against *De Minimis* Parties. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Section 107(a) and 113(f) of CERCLA) that they may have for all response costs regarding the Site and Natural Resource Damages against any person that has entered into a final CERCLA § 122(g) *de minimis* settlement with EPA regarding the Site as of the Effective Date. This waiver shall not apply to: (a) 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 regarding the Site against such Settling Defendant; (b) any contractual claim in the nature of indemnification from such person or for reimbursement from an insurance carrier; (c) any liability regarding response actions relating in any way to the GA Area beyond those limited investigation activities described in and required by Section IV.D of the SOW; and (d) any liability regarding response actions related in any way to the former Lori Corp. property beyond those limited water level monitoring activities described in and required by Section IV.C.3.c. of the SOW.

#### XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

114. Except as provided in Paragraph 113 (“Waiver of Claims Against *De Minimis* Parties”), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraph 113 (“Waiver of Claims Against *De Minimis* Parties”), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

115. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and the Settling Federal Agencies are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), or as may be otherwise provided by law, for matters addressed in this Consent Decree. The “matters addressed” in this Consent Decree are all (a) response actions taken or to be taken and all response costs incurred or to be incurred by the United States, the State or any other person with respect to the Site pursuant to this Consent Decree, and (b) Natural Resource Damages. In addition, the Parties agree, and by entering into this Consent Decree this Court finds, that each Settling Defendant and the Settling Federal Agencies are entitled to any applicable provision of Connecticut law governing contribution protection with respect to any claim regarding the Site that otherwise might be asserted against them under Connecticut law. The “matters addressed” in this settlement do not include those response costs

or response actions as to which the United States or the State has reserved its rights under this Consent Decree (except for claims for failure to comply with this Consent Decree), in the event that the United States or the State asserts rights against Settling Defendants coming within the scope of such reservations.

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

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

118. Waiver of Claim-Splitting Defenses. 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 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 by Plaintiffs").

#### XXIV. ACCESS TO INFORMATION

119. 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 activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA 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.

#### 120. 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 or 40 C.F.R. Part 2, Subpart B, 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.

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

#### XXV. RETENTION OF RECORDS

122. Until ten years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 52.b of Section XIV ("Certification of Completion of the Work"), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relates to its or its predecessor's arrangement for disposal at the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

123. The United States acknowledges that each Settling Federal Agency (a) is subject to all applicable Federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA and State 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.

124. 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.

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

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

As to the United States:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DOJ Case No. 90-11-2-420-5

and

Chief, Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986  
Re: DOJ Case No. 90-11-2-420-5

and

James T. Owens III, Director  
Office of Site Remediation & Restoration  
U.S. Environmental Protection Agency  
Region 1  
One Congress Street, Suite 1100 (HIO)  
Boston, MA 02114-2023



As to EPA: Almerinda Silva  
 EPA Project Coordinator  
 U.S. Environmental Protection Agency  
 Region 1  
 One Congress Street, Suite 1100 (HBT)  
 Boston, MA 02114-2023

As to EPA Cincinnati Financial Office: U.S. Environmental Protection Agency  
 Cincinnati Financial Office  
 26 Martin Luther King Drive  
 Cincinnati, OH 45268

As to the State : John Looney, Assistant Attorney General  
 Lori D. DiBella, Assistant Attorney General  
 Office of the Attorney General  
 55 Elm Street  
 Hartford, CT 06106

and

Gennady Shteynberg, Project Coordinator  
 State of Connecticut  
 Department of Environmental Protection  
 79 Elm Street  
 Hartford, CT 06106

As to the Settling Defendants: [Name]  
 Settling Defendants' Project Coordinator  
 [Address]

**XXVII. EFFECTIVE DATE**

127. 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**

128. 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**

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

"Appendix A" is the 2006 ROD.

"Appendix B" is the map of the Site.

"Appendix C" is the SOW.

"Appendix D" is the Draft Easement.

"Appendix E" is the Trust Agreement for the 2009 OSL *De Minimis* Trust.

#### XXX. COMMUNITY RELATIONS

130. 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 Site.

#### XXXI. MODIFICATION

131. Material modifications to the SOW may be made only by 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.

132. Modifications to the schedules specified in the Consent Decree for completion of the Work, or 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. Such non-material modifications will become effective upon agreement of the parties.

133. Non-material modifications to the Consent Decree other than those addressed in Paragraph 132 may be made only by written notification to and written approval of the United States, the State and the Settling Defendants. Such modifications will become effective upon filing with the Court by the United States. Material modifications to the Consent Decree and any modifications to the Performance Standards may be made only by written notification to and written approval of the United States, the State, the Settling Defendants, and the Court.

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

135. For purposes of this Section, the Consent Decree shall not include the SOW or other attachments to the Consent Decree.

#### XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

136. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. The State may withdraw or withhold its consent to the entry of this Consent Decree if comments received disclose facts or considerations which show that the Consent Decree violates state law. The United States reserves the right to challenge in court the State withdrawal from the Consent

Decree, including the right to argue that the requirements of state law have been waived, pre-empted or otherwise rendered inapplicable by federal law. The State reserves the right to oppose the United States' position taken in opposition to the proposed withdrawal. In addition, in the event of the United States' withdrawal from this Consent Decree, the State reserves its right to withdraw from this Consent Decree. Settling Defendants consent to the entry of this Consent Decree without further notice.

137. 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

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

139. 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.

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

#### XXXIV. FINAL JUDGMENT

141. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

142. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling

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

SO ORDERED THIS 23<sup>rd</sup> DAY OF November, 2009.

*Stefan R. Underhill, USDJ*  
*Stefan R. Underhill*  
United States District Judge

Signature Page for Remedial Design/Remedial Action Consent Decree Regarding  
Old Southington Landfill Superfund Site in Southington, Connecticut.

FOR THE UNITED STATES OF AMERICA:



ELLEN M. MAHAN  
Deputy Section Chief  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice

\_\_\_\_\_  
Date

MARK A. GALLAGHER  
Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20044-7611

LETTIA GRISHAW  
Section Chief  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice

9/21/09  
Date



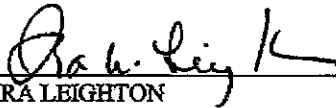
LAUREL A. BEDIG  
Environmental Defense Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
P.O. Box 23986  
Washington, D.C. 20026-3986

NORA R. DANNAHEY  
Acting United States Attorney  
District of Connecticut

JOHN B. HUGHES  
Assistant United States Attorney  
District of Connecticut  
Connecticut Financial Center  
157 Church Street  
New Haven, CT 06510

Signature Page for Remedial Design/Remedial Action Consent Decree Regarding  
Old Southington Landfill Superfund Site in Southington, Connecticut.

8/19/09  
Date

  
\_\_\_\_\_  
IRA LEIGHTON  
Acting Regional Administrator, Region 1  
U.S. Environmental Protection Agency  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

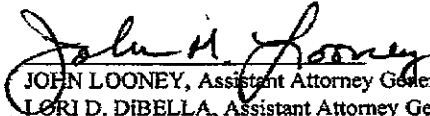
August 11, 2009  
Date

  
\_\_\_\_\_  
MICHELLE LAUTERBACK  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region 1  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

Signature Page for Remedial Design/Remedial Action Consent Decree Regarding  
Old Southington Landfill Superfund Site in Southington, Connecticut.

FOR THE STATE OF CONNECTICUT:

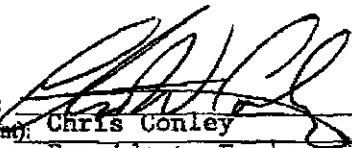
8/12/09  
Date

  
JOHN LOONEY, Assistant Attorney General  
LORI D. DIBELLA, Assistant Attorney General  
Office of the Attorney General  
55 Elm Street  
Hartford, CT 06106

Signature Page for Remedial Design/Remedial Action Consent Decree Regarding  
Old Southington Landfill Superfund Site in Southington, Connecticut.

FOR GenCorp, Inc.

7/2/09  
Date

Signature:   
Name (print): Chris Conley  
Title: Vice President, Environmental, Health  
& Safety  
Address: P. O. Box 13222  
Sacramento, CA 95813

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

Name (print): David Rymph  
Title: GenCorp, Inc.  
Address: 26677 W. 12 Mile Road, Suite 140  
Southfield, MI 48034  
Phone: (248) 358-2696



Signature Page for Remedial Design/Remedial Action Consent Decree Regarding  
Old Southington Landfill Superfund Site in Southington, Connecticut.

FOR Kraft Foods Global, Inc. (for  
itself and on behalf of Rexall Chemical,  
Sundown Vitamins and Kraft General  
Foods)

July 23, 2009  
Date

Signature: [Handwritten Signature]  
Name (print): Ken Wengert  
Title: Director Safety & Environmental  
Address: Kraft Foods  
Three Lakes Drive  
Northfield IL 60093

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

Name (print): Christopher P. Davis  
Title: Attorney  
Address: Goodwin Procter LLP  
Exchange Place  
Boston, MA 02109  
Phone: (617) 570-1354

Signature Page for Remedial Design/Remedial Action Consent Decree Regarding  
Old Southington Landfill Superfund Site in Southington, Connecticut.

FOR Shell Oil Company

7-27-09  
Date

Signature: *Raymond Collins*  
Name (print): Raymond T. Collins  
Title: Gen. Mgr. P&O, Shell Downstream Int'l  
Address: P.O. Box 2463  
Houston, TX 77252

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


Name (print): Kim Lesniak, Esq  
Title: ENVIRONMENTAL ATTORNEY - CERCLA  
Address: ONE SHELL PLAZA  
910 LOUISIANA ST.  
HOUSTON, TX 77002  
Phone: (713) 241-5403

Registered Agent : The Corporation Trust Company  
Corporation Trust Center  
1209 Orange St.  
Wilmington, New Castle, DE  
19801

Signature Page for Remedial Design/Remedial Action Consent Decree Regarding  
Old Southington Landfill Superfund Site in Southington, Connecticut.

FOR TOWN OF SOUTHINGTON, CT

7/23/09  
Date

Signature:   
Name (print): John Weichsel  
Title: Town Manager  
Address: 75 Main Street  
P. O. Box 610  
Southington, CT 06489


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

Name (print): Martin T. Bocher  
Title: Partner  
Address: Dewey & LeBoeuf LLP  
Goodwin Square  
Phone: 225 Asylum Street  
Hartford, CT 06103  
Phone: 212-259-7038

Signature Page for Remedial Design/Remedial Action Consent Decree Regarding  
Old Southington Landfill Superfund Site in Southington, Connecticut.

FOR United Technologies Corporation

July 27, 2009  
Date

Signature:   
Name (print): Richard H. Bennett  
Title: Vice President, Environment, Health & Safety  
Address: United Technologies Corporation  
One Financial Plaza  
Hartford, CT 06101

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

Name (print): William F. Leikin  
Title: Assistant General Counsel  
Address: United Technologies Corporation  
One Financial Plaza, MS-524  
Hartford, CT 06101  
Phone: (860) 728-6430

Received for Record at Southington, CT  
On 09/14/2010 At 3:00:22 pm

