

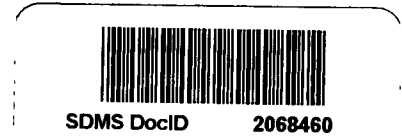


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SPECIAL NOTICE LETTER
URGENT LEGAL MATTER
PROMPT REPLY NECESSARY
CERTIFIED MAIL; RETURN RECEIPT REQUESTED

NOV 4 2005

Beazer East, Inc.
Attn: William Giarla, Esquire
One Oxford Center, Suite 3000
Pittsburgh, PA 15219



Re: Special Notice/Demand Letter for the Koppers (Newport Plant) Superfund Site in Newport, New Castle County, Delaware

Dear Mr. Giarla:

This letter follows the general notice letter that the U.S. Environmental Protection Agency (EPA) sent to Beazer East, Inc. ("Beazer") on February 15, 1990 in connection with the Koppers (Newport Plant) Superfund Site located in Newport, New Castle County, Delaware ("Site"). In that letter, EPA notified Beazer of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA" or "Superfund"), 42 U.S.C. § 9607(a), for the cleanup of the Site, including all costs incurred by the EPA in responding to releases at the Site. On September 30, 2005, EPA selected a remedial action for implementation at the Site, which remedial action is described in a document called a Record of Decision ("ROD"). EPA is now contacting Beazer in an attempt to resolve its liability with respect to this matter. Toward that end, this letter contains:

1. Notification that a limited period of formal negotiations for an agreement under which you will implement the requirements of the ROD and reimburse EPA's costs begins with your receipt of this letter (Special Notice);
2. A formal demand for reimbursement of costs that have been paid (including interest thereon) and that are to be paid (which are subject to interest) in conducting and/or overseeing response actions at the Site (Demand for Payment);
3. General and site-specific information to assist you in these negotiations; and
4. A proposed consent decree and administrative consent order as described below.



SPECIAL NOTICE AND NEGOTIATION MORATORIUM

EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between Beazer and EPA for implementation of the response action. Under Section 122(e), this letter triggers a sixty (60)-day moratorium on certain EPA response activities at the Site. During this 60-day moratorium, EPA will not begin response actions at the Site. However, EPA reserves the right to take action at the Site at any time should a significant threat to the human health or the environment arise.

During this 60-day period, Beazer is invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the response action at the Site. The 60-day negotiation period ends sixty (60) calendar days from the date Beazer receives this letter. The 60-day negotiation moratorium will be extended for an additional sixty (60) days if Beazer provides EPA with a "good faith offer" to conduct or finance the response action and reimburse EPA for its costs incurred to date. If EPA determines that Beazer's proposal is not a "good faith offer," it will be notified in writing of EPA's decision to end the moratorium. If the moratorium is extended for an additional 60 days, negotiations will conclude 120 calendar days from the date Beazer's receives this letter. If settlement is reached between EPA and Beazer within the 120-day negotiation moratorium, the settlement will be embodied in a Consent Decree for Remedial Design/Remedial Action ("RD/RA"). When approved by EPA and the U.S. Department of Justice ("DOJ"), the Consent Decree will then be lodged in federal court.

If a "good faith offer" is not received within sixty (60) days, or a timely settlement cannot be reached, EPA may take appropriate action at the Site, which may include either of the following options: (1) EPA may fund the remedial action and pursue a cost recovery claim under 107 of CERCLA against Beazer; or (2) EPA may issue a Unilateral Administrative Order ("UAO") to Beazer under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), requiring them to perform the work described in the ROD. If the recipient of a UAO refuses to comply with the UAO, EPA may pursue civil litigation against the recipient to require compliance.

GOOD FAITH OFFER

A proposed Consent Decree is enclosed to assist you in developing a "good faith offer." Section 122(d)(1)(A) of CERCLA, 42 U.S.C. § 9622(d)(1)(A), requires that settlements for remedial action be entered in the appropriate federal district court in the form of a consent decree. The proposed Consent Decree provides boilerplate language for most provisions in order to standardize CERCLA consent decrees as much as possible and expedite CERCLA settlements. The United States will commence negotiations with a document containing language which, for the most part, is the same language the Government will expect in a final settlement because it reflects legal and procedural terms that have been found acceptable to both EPA and the regulated community in a large number of situations. Beazer's decision to submit a good faith proposal to perform the work should be made with the understanding that the terms appearing in the proposed consent decree are substantially the terms which EPA expects to appear in the final settlement.

Also enclosed find a proposed administrative consent order ("Order") which provides that Beazer will commence remedial design activities upon the effective date of the Order. The Order need not be entered in Federal court and will enable you to commence design activities prior to



entry of the proposed remedial action Consent Decree. The Order will remain in effect until the Consent Decree is entered. EPA encourages Beazer to enter into such an Order.

As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 60 days if Beazer submits a "good faith offer" to EPA. A "good faith offer" to conduct or finance the remedial action is a written proposal that demonstrates Beazer's qualifications and willingness to perform such work and includes the following elements:

- A statement of Beazer's willingness and financial ability to implement the requirements of the ROD and proposed Consent Decree and that provides a sufficient basis for further negotiation;
- A demonstration of Beazer's technical capability to carry out the remedial action, including identification of the firm(s) that may actually conduct the work or a description of the process that will be undertaken to select the firm(s);
- A statement of Beazer's willingness to reimburse EPA for costs EPA will incur in overseeing your implementation of the remedial action;
- A response to the proposed Consent Decree. If Beazer's offer contemplates modifications to the Consent Decree, please make revisions or edits to the Consent Decree and submit a version showing the proposed modifications to it in WordPerfect format;
- The contact information for Beazer, including name, address, and telephone number for a corporate contact; and
- The name, address, and phone number of the person who will represent Beazer in negotiations.

DEMAND FOR REIMBURSEMENT OF COSTS

With this letter, EPA demands that you reimburse EPA for EPA's response costs incurred as of June 25, 2005, and encourages Beazer to voluntarily negotiate a consent decree in which it agrees to perform the RD/RA.

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. These response actions include: providing oversight activities for the RI/FS studies and investigations and the preparation of the ROD for the Site. EPA is seeking to recover from Beazer its response costs and all the interest authorized to be recovered under Section 107(a) of CERCLA. The approximate total response costs identified through June 25, 2005, for the Site are \$371,023.95. Under Section 107(a) of CERCLA, EPA hereby makes a demand for payment from Beazer for the above amount plus all interest authorized to be recovered under Section 107(a). A summary of these costs is enclosed as Attachment A.



While this letter demands that Beazer reimburse EPA for all funds spent at the Site, EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If Beazer believes, and it can document, that it falls within this category, please contact Patricia C. Miller, Senior Assistant Regional Counsel at 215-814-2662 for information on "Ability to Pay Settlements." In response, Beazer will receive a package of information about such settlements and a form to fill out with information about its finances, and you will be asked to submit financial records including "business" federal tax returns. If EPA concludes that Beazer has a legitimate inability to pay the full amount, EPA may offer a schedule for payment over time or a reduction in the total amount demanded from Beazer.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to Beazer and/or Koppers. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether Beazer should notify its insurance carrier(s) of this demand, it may wish to review current and past policies, beginning with the date of Beazer's and/or Koppers' first contact with the Koppers (Newport Plant) Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that Beazer files for protection in a bankruptcy court, it must include EPA as creditor, because EPA has a potential claim against Beazer. EPA reserves the right to file a proof of claim or application for Reimbursement of Administrative Expenses.

ADMINISTRATIVE RECORD

In accordance with Section 113 of CERCA, 42 U.S.C. § 9613, EPA has established an Administrative Record containing the documents that serve as the basis for EPA's selection of the appropriate response action for the Site. A copy of the documents contained in the Administrative Record for each response action selected for the Site will be available on the internet at www.epa.gov/arweb or may be available in hardcopy at the offices of U.S. EPA -- Region 3, 1650 Arch Street, Philadelphia, PA 19103. Beazer may wish to review the Administrative Record to assist it in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA.

PRP RESPONSE AND EPA CONTACT PERSON

Beazer is encouraged to contact EPA by **November 23, 2005** to indicate its willingness to participate in future negotiations concerning this Site.

Beazer's response to this Special Notice Letter and the demand for costs included herein including written proposals to perform the remedial action selected for the Site, should be sent to:

U.S. Environmental Protection Agency
Matthew Mellon
EPA Project Coordinator (3HS23)
1650 Arch Street
Philadelphia, PA 19103
215-814-3168



The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, EPA urges that Beazer give immediate attention and prompt response to this letter. Beazer is encouraged to contact EPA by **November 23, 2005** to indicate its willingness to participate in future negotiations and to provide a written response in accordance with the requirements set forth herein **within sixty (60) calendar days** of its receipt of this letter to indicate its willingness to participate in future negotiations concerning this Site (this is the deadline for submission of a good faith proposal as described above). If EPA does not receive a timely response, EPA will assume that Beazer does not wish to negotiate a resolution of your liabilities in connection with the Site, and that it has declined any involvement in performing the response activities.

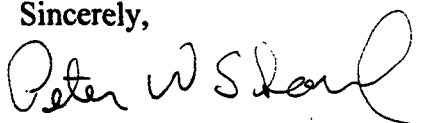
RESOURCES AND INFORMATION

As Beazer may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. Beazer may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

If Beazer has any questions regarding the technical aspects of this letter, please contact Matthew Mellon, Remedial Project Manager, at 215-814-3168. If Beazer has an attorney handling your legal matters, please direct his or her questions to Patricia C. Miller, Senior Assistant Regional Counsel at 215-814-2662

My staff and I look forward to working with you during the coming months.

Sincerely,



Peter W. Schaul
Director
Office of Superfund Site Remediation
EPA Region III

Enclosures

cc: Delaware Department of Natural Resources and Environmental Control ("DNREC")
Natural Resources Trustees



REPPAS SUCED →
LHP BEZ

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**UNITED STATES OF AMERICA and
STATE OF DELAWARE,**

Plaintiffs,

v.

BEAZER EAST, INC.

Defendant.

Civil Action No.

CONSENT DECREE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

UNITED STATES OF AMERICA and STATE OF DELAWARE,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.
	:	
BEAZER EAST, INC.	:	
	:	
Defendant.	:	

TABLE OF CONTENTS

I.	<u>BACKGROUND</u>	
II.	<u>JURISDICTION</u>	
III.	<u>PARTIES BOUND</u>	
IV.	<u>DEFINITIONS</u>	
V.	<u>GENERAL PROVISIONS</u>	
VI.	<u>PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS</u>	
VII.	<u>REMEDY REVIEW</u>	
VIII.	<u>QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS</u>	
IX.	<u>ACCESS AND INSTITUTIONAL CONTROLS</u>	
X.	<u>REPORTING REQUIREMENTS</u>	
XI.	<u>EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS</u>	
XII.	<u>PROJECT COORDINATORS</u>	
XIII.	<u>ASSURANCE OF ABILITY TO COMPLETE WORK</u>	
XIV.	<u>CERTIFICATION OF COMPLETION</u>	
XV.	<u>EMERGENCY RESPONSE</u>	
XVI.	<u>PAYMENTS FOR RESPONSE COSTS</u>	
XVII.	<u>INDEMNIFICATION AND INSURANCE</u>	
XVIII.	<u>FORCE MAJEURE</u>	
XIX.	<u>DISPUTE RESOLUTION</u>	
XX.	<u>STIPULATED PENALTIES</u>	
XXI.	<u>COVENANTS NOT TO SUE BY PLAINTIFFS</u>	
XXII.	<u>COVENANTS BY SETTLING DEFENDANTS</u>	
XXIII.	<u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u>	
XXIV.	<u>ACCESS TO INFORMATION</u>	
XXV.	<u>RETENTION OF RECORDS</u>	
XXVI.	<u>NOTICES AND SUBMISSIONS</u>	
XXVII.	<u>EFFECTIVE DATE</u>	
XXVIII.	<u>RETENTION OF JURISDICTION</u>	
XXIX.	<u>APPENDICES</u>	
XXX.	<u>COMMUNITY RELATIONS</u>	
XXXI.	<u>MODIFICATION</u>	
XXXII.	<u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	

XXXIII. SIGNATORIES/SERVICE
XXXIV. RELATIONSHIP BETWEEN ADMINISTRATIVE SETTLEMENT AGREEMENT AND CONSENT
DECREE
XXXV. FINAL JUDGMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

_____ :
:
UNITED STATES OF AMERICA and :
STATE OF DELAWARE, :

Plaintiffs, :

v. :

BEAZER EAST, INC. :

Defendant. :
_____ :

Civil Action No.

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Koppers (Newport) Superfund Site in Newport, New Castle County, Delaware ("Site"), together with accrued interest; and (2) performance of studies and response work by the Defendant 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 Delaware (the "State") on October 20, 2005 of

1 negotiations with the potentially responsible party regarding the implementation of the remedial
2 design and remedial action for the Site, and EPA has provided the State with an opportunity to
3 participate in such negotiations and be a party to this Consent Decree.

4 D. The State has also filed a complaint against the Defendant in this Court alleging that the
5 Defendant is liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and the Hazardous
6 Site Cleanup Act (“HSCA”) for response costs incurred for the Site.

7 E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the
8 Department of the Interior and the National Oceanic and Atmospheric Administration on October
9 20, 2005, of negotiations with the potentially responsible party regarding the release of hazardous
10 substances that may have resulted in injury to the natural resources under Federal trusteeship and
11 encouraged the trustees to participate in the negotiation of this Consent Decree.

12 F. The Defendant that has entered into this Consent Decree (“Settling Defendant”) does not
13 admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the
14 complaints, nor does it acknowledge that the release or threatened release of hazardous substances
15 at or from the Site constitutes an imminent or substantial endangerment to the public health or
16 welfare or the environment.

17 G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National
18 Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register
19 on October 26, 1989 at ___ Fed. Reg. _____.

20 H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or
21 from the Site, Settling Defendant commenced on September 26, 2001, a Remedial Investigation and
22 Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430.

1 I. Settling Defendant completed a Remedial Investigation (“RI”) Report on _____,
2 200_, and the Settling Defendant completed a Feasibility Study (“FS”) Report on October 7, 2004.

3 J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the
4 completion of the FS and of the proposed plan for remedial action on October 7, 2004 in a major
5 local newspaper of general circulation. EPA provided an opportunity for written and oral comments
6 from the public on the proposed plan for remedial action. A copy of the transcript of the public
7 meeting is available to the public as part of the administrative record upon which the Regional
8 Administrator based the selection of the response action.

9 K. The decision by EPA on the remedial action to be implemented at the Site is embodied in
10 a final Record of Decision (“ROD”) executed on September 30, 2005, on which the State has given
11 its concurrence. The ROD includes EPA's explanation for any significant differences between the
12 final plan and the proposed plan as well as a responsiveness summary to the public comments.
13 Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

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

17 M. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial
18 Action selected by the ROD and the Work to be performed by the Settling Defendant shall constitute
19 a response action taken or ordered by the President.

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

1 the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

3 **II. JURISDICTION**

4 1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§
5 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction
6 over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying
7 complaints, Settling Defendant waives all objections and defenses that it may have to jurisdiction
8 of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this
9 Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

10 **III. PARTIES BOUND**

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

15 3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to
16 perform the Work (as defined below) required by this Consent Decree and to each person
17 representing the Settling Defendant with respect to the Site or the Work and shall condition all
18 contracts entered into hereunder upon performance of the Work in conformity with the terms of this
19 Consent Decree. Settling Defendant or its contractors shall provide written notice of the Consent
20 Decree to all subcontractors hired to perform any portion of the Work required by this Consent

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

6 **IV. DEFINITIONS**

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

12 “CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and
13 Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

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

16 “Day” shall mean a calendar day unless expressly stated to be a working day. “Working day”
17 shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time
18 under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday,
19 the period shall run until the close of business of the next working day.

20 “DNREC” shall mean the Delaware Department of Natural Resources and Environmental
21 Control and any successor departments or agencies of the State.

1 "Duly Authorized Representative" shall mean a person set forth or designated in accordance
2 with the procedures set forth in 40 C.F.R. § 270.11(b).

3 "Effective date" shall be the effective date of this Consent Decree as provided in Section XXVII
4 of this Consent Decree.

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

7 "Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in
8 monitoring and supervising Settling Defendant's performance of the Work to determine whether
9 such performance is consistent with the requirements of this Consent Decree, including costs
10 incurred in reviewing plans, reports, and other documents submitted pursuant to this Consent Decree,
11 as well as costs incurred in overseeing implementation of the Work; however, Oversight Costs do
12 not include, *inter alia*: the costs incurred by the United States pursuant to Sections VII (Remedy
13 Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 87 of
14 Section XXI (Work Takeover), or the costs incurred by the United States in enforcing the terms of
15 this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to
16 Section XIX (Dispute Resolution) and all litigation costs.

17 "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect
18 costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant
19 to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this
20 Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory
21 costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of
22 attorney time and any monies paid to secure access and/or to secure or implement institutional

1 controls including, but not limited to, the amount of just compensation), XV, and Paragraph 87 of
2 Section XXI. Future Response Costs shall also include all Interim Response Costs and all Interest
3 on those Past Response Costs Settling Defendant has agreed to reimburse under this Consent Decree
4 that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from June 25, 2005 to the date
5 of entry of this Consent Decree.

6 “Interim Response Costs” shall mean all costs, including direct and indirect costs, (a) paid by
7 the United States in connection with the Site between June 25, 2005 and the Effective Date, or (b)
8 incurred prior to the Effective Date but paid after that date. Interim Response Costs shall also
9 include Interest that has accrued on the Settlement Amount between June 25, 2005 and the date of
10 payment of the Settlement Amount.

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

16 “Interest Earned” shall mean interest earned on amounts in the Koppers (Newport) Special
17 Account, which shall be computed monthly at a rate based on the annual return on investments of
18 the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the
19 time the interest accrues.

20 “Koppers (Newport) Special Account” shall mean the special account established at the Site by
21 EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3) under this Consent Decree.

22 “National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances

1 Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605,
2 codified at 40 C.F.R. Part 300, and any amendments thereto.

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

6 “Owner Settling Defendant” shall mean Beazer East, Inc.

7 “Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an
8 upper case letter.

9 “Parties” shall mean the United States, the State of Delaware and the Settling Defendant.

10 “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect
11 costs, that the United States has paid at or in connection with the Site through June 25, 2005, and
12 which are identified in the Two-Page Certified Cost Summary dated August 31, 2005 attached
13 hereto as Appendix B, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. §
14 9607(a) through such date.

15 “Performance Standards” shall mean the cleanup standards and other measures of achievement
16 of the goals of the Remedial Action, set forth in Section 11.2 of the ROD and further specified in
17 Table 8 of the ROD, attached hereto as Appendix A and those that are developed by the Settling
18 Defendant and approved by EPA during Remedial Design and any modified standards established
19 by EPA pursuant to the “technical impracticability” provision of Paragraph 13.

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

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

1 “Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site
2 signed on September 30, 2005 by the Regional Administrator, EPA Region III, or his/her delegate,
3 and all attachments thereto. The ROD is attached as Appendix A.

4 “Remedial Action” shall mean those activities, except for Remedial Design and Operation and
5 Maintenance, to be undertaken by the Settling Defendant to implement the ROD, in accordance with
6 the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

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

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

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

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

15 “Settlement Amount” shall mean the amount the Settling Defendant is required to pay pursuant
16 to Paragraph 54 (Payments for Past Response Costs) of this Consent Decree.

17 “Settling Defendant” shall mean Beazer East, Inc. (a/k/a Owner Settling Defendant).

18 “Site” shall mean the Koppers (Newport) Superfund Site, encompassing approximately 317
19 acres, located at the intersection of James and Water Streets in Newport, New Castle County,
20 Delaware and further depicted in the ROD.

21 “State” shall mean the State of Delaware.

22 “State Past Response Costs” shall mean

1 "State Future Response Costs" shall mean

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

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

5 "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA,
6 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C.
7 § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4)
8 any "hazardous material" under [insert appropriate State statutory citation].

9 "Work" shall mean all activities Settling Defendant is required to perform under this Consent
10 Decree, except those required by Section XXV (Retention of Records).

11 **V. GENERAL PROVISIONS**

12 **5. Objectives of the Parties**

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

17 **6. Commitments by Settling Defendant**

18 a. Settling Defendant shall finance and perform the Work in accordance with this
19 Consent Decree, the ROD, and all work plans and other plans, standards, specifications, and
20 schedules set forth herein or developed by Settling Defendant and approved by EPA pursuant to this
21 Consent Decree. Settling Defendant shall also reimburse the United States and the State for Past

1 Response Costs and Future Response Costs as provided in this Consent Decree.

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

5 **7. Compliance With Applicable Law**

6 All activities undertaken by Settling Defendant pursuant to this Consent Decree shall be
7 performed in accordance with the requirements of all applicable federal and state laws and
8 regulations. Settling Defendant must also comply with all applicable or relevant and appropriate
9 requirements of all Federal and state environmental laws as set forth in the ROD. The activities
10 conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent
11 with the NCP.

12 **8. Permits**

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

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

22 c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant

1 to any federal or state statute or regulation.

2 9. Notice of Obligations to Successors-in-Title

3 a. With respect to any property owned or controlled by the Settling Defendant that is
4 located within the Site, within fifteen (15) days after the entry of this Consent Decree, the Settling
5 Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder's
6 Office, New Castle County, State of Delaware, which shall provide notice to all successors-in-title
7 that the property is part of the Site, that EPA selected a remedy for the Site on September 30, 2005,
8 and that Settling Defendant has entered into a Consent Decree requiring implementation of the
9 remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree
10 was filed, the name and civil action number of this case, and the date the Consent Decree was
11 entered by the Court. The Settling Defendant shall record the notice(s) within ten (10) days of
12 EPA's approval of the notice(s). The Settling Defendant shall provide EPA with a certified copy of
13 the recorded notice(s) within ten (10) days of recording such notice(s).

14 b. At least thirty (30) days prior to the conveyance of any interest in property located
15 within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests,
16 the Settling Defendant conveying the interest shall give the grantee written notice of (i) this Consent
17 Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a
18 right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX
19 (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has
20 been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter
21 referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls).
22 At least thirty (30) days prior to such conveyance, the Settling Defendant conveying the interest shall

1 also give written notice to EPA and the State of the proposed conveyance, which notice shall include
2 the name and address of the grantee and the date on which notice of the Consent Decree, access
3 easements, and/or restrictive easements was given to the grantee.

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

12 **VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT**

13 10. Selection of Contractors.

14 a. Supervising Contractor.

15 i. All aspects of the Work to be performed by Settling Defendant pursuant to
16 Sections VI (Performance of the Work by Settling Defendant), VII (Remedy Review), VIII
17 (Quality Assurance, Sampling, and Data Analysis), and XV (Emergency Response) of this
18 Consent Decree shall be under the direction and supervision of the Supervising Contractor, the
19 selection of which shall be subject to acceptance or disapproval by EPA after a reasonable
20 opportunity for review and comment by the State. Within ten (10) days after the lodging of this
21 Consent Decree, Settling Defendant shall notify EPA and the State in writing of the name, title,

1 and qualifications of any contractor proposed to be the Supervising Contractor. With respect to
2 any contractor proposed to be Supervising Contractor, Settling Defendant shall demonstrate that
3 the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994,
4 “Specifications and Guidelines for Quality Systems for Environmental Data Collection and
5 Environmental Technology Programs,” (American National Standard, January 5, 1995), by
6 submitting a copy of the proposed contractor’s Quality Management Plan (QMP). The QMP
7 should be prepared in accordance with “EPA Requirements for Quality Management Plans
8 (QA/R-2)” (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by
9 EPA. EPA will issue a notice of disapproval or acceptance of the selection of such Supervising
10 Contractor. If at any time thereafter, Settling Defendant proposes to change a Supervising
11 Contractor, Settling Defendant shall give such notice to EPA and the State and must obtain a
12 notice of acceptance of such change from EPA, after a reasonable opportunity for review and
13 comment by the State, before the new Supervising Contractor performs, directs, or supervises
14 any Work under this Consent Decree.

15 ii. If EPA disapproves the selection of a proposed Supervising Contractor,
16 EPA will notify Settling Defendant in writing. Settling Defendant shall submit to EPA and the
17 State a list of at least three contractors, including the qualifications of each contractor, that would
18 be acceptable to them within thirty (30) days of receipt of EPA's notice. EPA will provide
19 written notice of the names of any contractor(s) whose selection it would accept. Settling
20 Defendant may select any contractor from that list and shall notify EPA and the State of the name
21 of the contractor selected within twenty-one (21) days of EPA's written notice.

22 iii. If EPA fails to provide written notice of its acceptance or disapproval as

1 provided in this Paragraph and this failure prevents the Settling Defendant from meeting one or
2 more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling
3 Defendant may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent
4 Decree.

5 b. Other Contractors and Subcontractors.

6 i. The Settling Defendant shall submit to EPA and the State for acceptance
7 by EPA the names and qualifications of any additional contractors and subcontractors they
8 propose to use to satisfy any requirement of this Consent Decree before such contractor or
9 subcontractor performs any Work. If EPA does not respond with a notice accepting or
10 disapproving the proposal for additional contractors and subcontractors within fourteen (14) days
11 of receipt by EPA of Settling Defendant's selections, the proposal for additional contractors and
12 subcontractors shall be deemed accepted. In the event EPA disapproves any proposed contractor
13 or subcontractor, Settling Defendant shall submit to EPA and the State a list of at least three
14 contractors or subcontractors, including the qualifications of each, that would be acceptable to
15 them within ten (10) days of receipt of EPA's notice. EPA will provide written notice of the
16 names of any contractor(s) or subcontractor(s) whose selection it would accept. Settling
17 Defendant may select any contractor or subcontractor from that list and shall notify EPA and the
18 State of the name of the contractor or subcontractor selected within five (5) days of EPA's written
19 notice.

11. Remedial Design/Remedial Action.

a. Within 30 days after EPA's acceptance of the selection of the Supervising Contractor pursuant to Paragraph 10, Settling Defendant 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 RD Work Plan shall be prepared by the individual(s) and/or entity(ies) responsible for completion of the Remedial Design, except to the extent such persons have been disapproved by EPA. The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD and for achievement of the Performance Standards and other requirements set forth in the ROD and this Consent Decree. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. The Settling Defendant shall also submit to EPA and the State, at the time the Remedial Design Work plan is submitted, 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. The Remedial Design Work Plan shall include plans, schedules, and methodologies for implementation of all remedial design and pre-design tasks and shall include, at a minimum:

1. a Site Management Plan;
2. a Sampling and Analysis Plan, containing:
 - a. a Field Sampling Plan; and
 - b. a Quality Assurance Project Plan (QAPP);
3. a Remedial Design Contingency Plan;

- 1 4. a Treatability Study Work Plan which includes, at a minimum, plans
2 and schedules for the preparation and submission of a Treatability
3 Study Evaluation Report;
- 4 5. plans and schedules for the preparation and submission of a
5 Preliminary Design Submittal (the preliminary design begins with the
6 initial design and ends with the completion of approximately 30% of
7 the design effort) containing, at a minimum:
 - 8 a. a Design Criteria Report, including:
 - 9 1. project description;
 - 10 2. design requirements and provisions;
 - 11 3. preliminary process flow diagrams;
 - 12 4. operation & maintenance requirements;
 - 13 b. a Basis of Design Report, including:
 - 14 1. justification of design assumptions;
 - 15 2. a project delivery strategy;
 - 16 3. remedial action permits plan for off-site permits;
 - 17 4. preliminary easement/access requirements;
 - 18 c. Preliminary Drawings and Specifications, including:
 - 19 1. outline of general specifications;
 - 20 2. preliminary schematics and drawings;
 - 21 3. chemical and geotechnical data (including data from
22 pre-design activities);

- d. a value engineering screen; and
- e. preliminary Remedial Action schedule.

6. plans and schedules for the preparation and submission of an intermediate design submittal which shall be submitted at approximately 60% percent of the design effort and shall address all of EPA's comments to the preliminary design and, at a minimum, additionally include:

- a. a revised Design Criteria Report, if necessary;
- b. a revised Basis of Design Report, if necessary;
- c. any value engineering study results;
- d. a revised Remedial Action schedule;
- e. a preliminary Remedial Action contingency plan;
- f. a preliminary Remedial Action Health and Safety Plan (“HASP”) for EPA acceptance;
- g. a preliminary Remedial Action waste management plan; and
- h. a preliminary Remedial Action Sampling and Analysis Plan.

7. plans and schedules for the preparation and submission of a pre-final design submittal which shall be submitted at approximately 90% of the design effort and shall address all of EPA's comments to the intermediate design, and, at a minimum, additionally include:

- a. a preliminary Operation & Maintenance Plan;
- b. a preliminary Construction Quality Assurance Plan (“CQAP”)

(the CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project);

- c. a preliminary Remedial Action decontamination plan;
- d. a draft final Remedial Action schedule;
- e. a draft final Remedial Action contingency plan; and
- f. a draft final Remedial Action HASP for EPA acceptance.

8. plans and schedules for the preparation and submission of a final design submittal which shall be submitted at 100% of the design effort and shall address all of EPA's comments to the pre-final design, and, at a minimum, additionally include:

- a. a final Remedial Action schedule;
- b. a final Remedial Action contingency plan;
- c. a final Remedial Action HASP for EPA acceptance;
- d. a final Remedial Action waste management plan;
- e. a preliminary Remedial Action decontamination plan and a schedule for the submission of the final Remedial Action decontamination plan;
- f. a final Design Criteria Report;

- g. a final Remedial Action Sampling and Analysis Plan (directed at measuring progress towards meeting the Performance Standards);
- h. a final Basis of Design Report;
- i. final Drawings and Specifications;
- j. a revised Operation & Maintenance Plan and a schedule for submission of the final Operation & Maintenance Plan;
- k. a final Construction Quality Assurance Plan;
- l. a final Remedial Action decontamination plan; and
- m. a final project delivery strategy.

9. a Remedial Design schedule.

c. 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 Defendant shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Settling Defendant 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 therein for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendant shall not commence further Remedial Design field activities at the Site prior to approval of the Remedial Design Work Plan.

d. Upon approval, approval with conditions, or modification by EPA, as provided in

1 Section XI (EPA Approval of Plans and Other Submissions), of all components of the final
2 design submittal, the final design submittal shall serve as the Remedial Action Work Plan and
3 shall be enforceable under this Consent Decree. The Settling Defendant shall implement the
4 activities required under the Remedial Action Work Plan in accordance with the schedules and
5 methodologies contained therein.

6 e. The Settling Defendant shall submit all plans, submittals, or other deliverables
7 required under the Remedial Action Work Plan in accordance with the approved schedule for
8 review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions).
9 Unless otherwise directed by EPA or required under the Remedial Design Work Plan, the
10 Settling Defendant shall not commence physical activities at the Site prior to the date for
11 commencement set forth in the approved schedule in the Remedial Action Work Plan.

12 12. Resident Engineer. Following EPA approval, approval with conditions, or modification
13 by EPA, as provided in Section XI (EPA Approval of Plans and Other Submissions), of all
14 components of the final design submittal, and prior to commencement of any on-Site Work under
15 the Remedial Action Work Plan, the Settling Defendant shall submit to EPA the name and
16 qualifications of a Resident Engineer to be present at the Site during construction to ensure that
17 the Work is performed in accordance with the approved Remedial Action Work Plan. The
18 Resident Engineer shall be familiar with all aspects of the Remedial Design approved by EPA.
19 EPA retains the right to disapprove the use of any Resident Engineer proposed by Settling
20 Defendant. In the event EPA disapproves the use of any proposed Resident Engineer, Settling
21 Defendant shall submit to EPA and the State a list of at least three replacements, including the
22 qualifications of each, who would be acceptable to them within five (5) days of receipt of EPA's

1 notice. EPA will provide written notice of the names of any replacements whose use it would
2 accept. Settling Defendant may select any replacement from the EPA notice and shall notify
3 EPA and the State of the name of the replacement selected within three (3) days of EPA's written
4 notice. Settling Defendant shall ensure that the Resident Engineer performs on-Site inspections
5 as necessary to ensure compliance with the approved Remedial Action Work Plan and that the
6 results of such inspections are promptly provided to Settling Defendant, EPA, and the State. The
7 Resident Engineer may act as the QA Official.

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

11 14. Modification of the Work.

12 a. If EPA determines that modification of the Work is necessary to achieve and
13 maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy
14 set forth in the ROD, EPA may (1) require that such modification be incorporated into the
15 Remedial Design Work Plan , Remedial Action Work Plan, Operation and Maintenance Plan,
16 and/or any other plan relating to such Work, and/or (2) require that Settling Defendant submit a
17 plan for EPA approval which incorporates such modification to the Work and implement such
18 approved plan. Provided, however, that a modification may be required pursuant to this
19 Paragraph only to the extent that it is consistent with the scope of the remedy selected in the
20 ROD.

21 b. For the purposes of this Paragraph 14 and Paragraphs 50 and 51 only, the “scope
22 of the remedy selected in the ROD” means:

- 1
- 2
- 3
- 4
- tasks employing a technology or combination of technologies discussed in Section 11 Selected Remedy of the ROD to achieve and maintain the objectives described in the ROD. The technologies discussed in Section 11.2 of the ROD include:

5

6

7

8

9

1. Excavating and consolidating all contaminated soils and sediments (soils with total PAHs greater than 600 mg/kg and sediments with total PAHs greater than 150 mg/kg) into one or two on-Site landfills or containment areas (the "Containment Area") to be located in the areas of the worst NAPL contamination;

10

11

12

13

14

15

2. Installing, operating and maintaining a ground water treatment system to prevent the migration of contaminated ground water, as well as to prevent the discharge of contaminated ground water from the recovery operation; and an oil-water separator to facilitate the recovery of free-phase NAPL, as well as to prevent NAPL from reaching the ground water treatment system;

16

17

3. Treating ground water as necessary to meet discharge requirements;

18

19

20

4. Constructing ground water barrier walls and collection systems in the Containment Area to prevent further migration of ground water contamination, including NAPL;

21

22

23

5. Managing the hydraulic head of ground water and collecting NAPL contamination in the ground water through the use of passive recovery trenches;

6. Separating creosote from ground water and transporting creosote off-site for disposal or recycling in accordance with Section 122(d)(3) of CERCLA;
7. Moving debris to a location on-Site where they can be placed under the RCRA modified cap;
8. Installing a RCRA modified cap across the Containment Area;
9. Relocating a portion of the existing channel of Hershey Run, if the Containment Area shall extend into Hershey Run wetlands;
10. Creating wetlands to replace wetlands filled in as a result of the landfill construction;

- tasks associated with monitoring of Site conditions and the effectiveness of the Remedial Action include:

1. Monitoring ground water, surface water, sediments and wetlands to ensure effectiveness of the remedy; and,
2. Prevent exposure to contamination inside the Containment Area or in ground water beneath the Site, and prevent the drawdown of contamination into the deeper aquifer or elsewhere, through land and ground water use restrictions for the Site and surrounding area (as appropriate).

- implementation of institutional controls to ensure the effectiveness of the remedial action shall include:

1. Land and ground water use restrictions for the Site and surrounding area (as appropriate) since the contamination will remain on-site; and,

1 2. Development of a Land Use Control Assurance Plan ("LUCAP") to
2 address institutional controls.

3 c. If Settling Defendant objects to any modification determined by EPA to be
4 necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX
5 (Dispute Resolution), Paragraph 68 (record review). The Remedial Design Work Plan, Remedial
6 Action Work Plan, Operation and Maintenance Plan, and/or related work plans shall be modified
7 in accordance with final resolution of the dispute.

8 d. Settling Defendant shall implement any work required by any modifications
9 incorporated in the Remedial Design Work Plan, Remedial Action Work Plan, Operation and
10 Maintenance Plan, and/or in work plans developed in accordance with this Paragraph.

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

13 15. Settling Defendant acknowledges and agrees that nothing in this Consent Decree or the
14 Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any
15 kind by Plaintiffs that compliance with the work requirements set forth in the Work Plans will
16 achieve the Performance Standards.

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

22 a. The Settling Defendant shall include in the written notification the following

1 information, where available:

- 2 1. the name and location of the facility to which the Waste Material is to be
3 shipped;
- 4 2. the type and quantity of the Waste Material to be shipped;
- 5 3. the expected schedule for the shipment of the Waste Material; and
- 6 4. the method of transportation.

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

10 b. The identity of the receiving facility and state will be determined by the Settling
11 Defendant following the award of the contract for Remedial Action construction. The Settling
12 Defendant shall provide the information required by Paragraph 16.a as soon as practicable after
13 the award of the contract but in no case less than seven (7) days before the Waste Material is
14 actually shipped.

15 c. Before shipping any hazardous substances, pollutants, or contaminants from the
16 Site to an off-site location, Settling Defendant shall obtain EPA's certification that the proposed
17 receiving facility is operating in compliance with the requirements of Section 121(d)(3) of
18 CERCLA and 40 C.F.R. § 300.440. Settling Defendant shall only send hazardous substances,
19 pollutants, or contaminants from the Site to an off-site facility that complies with the
20 requirements of the statutory provision and regulations cited in the preceding sentence.

21
22 **VII. REMEDY REVIEW**

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

5 18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the
6 Remedial Action is not protective of human health and the environment, EPA may select further
7 response actions for the Site in accordance with the requirements of CERCLA and the NCP.

8 19. Opportunity To Comment. Settling Defendant and, if required by Sections 113(k)(2) or
9 117 of CERCLA, the public will be provided with an opportunity to comment on any further
10 response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c)
11 of CERCLA and to submit written comments for the record during the comment period.

12 20. Settling Defendant's Obligation To Perform Further Response Actions. If EPA selects
13 further response actions for the Site, the Settling Defendant shall undertake such further response
14 actions to the extent that the reopener conditions in Paragraph 83 or Paragraph 84 (United States'
15 reservations of liability based on unknown conditions or new information) are satisfied. If EPA
16 requires Settling Defendant to undertake such further actions pursuant to this Paragraph, Settling
17 Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute
18 (1) EPA's determination that the reopener conditions of Paragraph 83 or Paragraph 84 of Section
19 XXI (Covenants Not To Sue by Plaintiffs) are satisfied, (2) EPA's determination that the
20 Remedial Action is not protective of human health and the environment, or (3) EPA's selection
21 of the further response actions. Disputes pertaining to whether the Remedial Action is protective
22 or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 68

(record review).

21. Submissions of Plans. If Settling Defendant is required to perform the further response actions pursuant to Paragraph 20, it 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 Defendant) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. While conducting all sample collection and analysis activities required by this Consent Decree, the Settling Defendant shall implement quality assurance, quality control, and chain of custody procedures in accordance with “EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5)” (EPA 240 B-01 003, March 2001); “EPA NEIC Policies and Procedures Manual,” (May 1986) (EPA 330/978-001-R); National Functional Guidelines for Inorganic Data Review (EPA 540/R-94/013) and Modifications to the National Functional Guidelines for Inorganic Data Review (EPA Region III: April 1993); National Functional Guidelines for Organic Data Review (EPA 540/R-94/012) and Modifications to the National Functional Guidelines for Organic Data Review (EPA Region III: September 1994); “Region III Innovative Approaches to Data Validation,” (EPA Region III: September 1994); “Data Quality Objectives Process for Superfund,” (EPA 540/R-93/071: September 1994); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State,

1 a Quality Assurance Project Plan ("QAPP") for the Work that is consistent with the NCP and the
2 guidance documents cited above. If relevant to the proceeding, the Parties agree that validated
3 sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA
4 shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling
5 Defendant shall ensure that EPA and State personnel and their authorized representatives are
6 allowed access at reasonable times to all laboratories utilized by Settling Defendant in
7 implementing this Consent Decree. In addition, Settling Defendant shall ensure that such
8 laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality
9 assurance monitoring. Settling Defendant shall ensure that the laboratories it utilizes for the
10 analysis of samples taken pursuant to this Decree perform all analyses according to accepted
11 EPA methods. Settling Defendant shall submit to EPA the selected laboratory's(ies') Quality
12 Assurance Program Plan and their qualifications, which shall include, at a minimum, previous
13 certifications, Performance Evaluation (PE) results, equipment lists and personnel resumes.
14 Settling Defendant shall ensure that all field methodologies utilized in collecting samples for
15 subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures
16 set forth in the QAPP approved by EPA. At the request of EPA, Settling Defendant shall
17 conduct one or more audits of the selected laboratory(ies) to verify analytical capability and
18 compliance with the QAPP. Auditors shall conduct lab audits during the time the laboratory(ies)
19 is analyzing samples collected pursuant to this Consent Decree. The lab audit shall be conducted
20 according to procedures available from the QA Branch. Audit reports shall be submitted to the
21 EPA Project Coordinator within fifteen (15) days of completion of the audit. The Settling
22 Defendant shall report serious deficiencies, including all those which adversely impact data

1 quality, reliability or accuracy, and take action to correct such deficiencies within twenty-four
2 (24) hours of the time the Settling Defendant knew or should have known of the deficiency.

3 23. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken
4 by EPA and the State or their authorized representatives. Settling Defendant shall notify EPA
5 and the State not less than twenty-eight (28) days in advance of any sample collection activity
6 unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to
7 take any additional samples that EPA or the State deem necessary. Upon request, EPA and the
8 State shall allow the Settling Defendant to take split or duplicate samples of any samples they
9 take as part of the Plaintiff's' oversight of the Settling Defendant's implementation of the Work.

10 24. Settling Defendant shall submit to EPA and the State five (5) copies of the results of all
11 sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant
12 with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees
13 otherwise.

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

18
19 **IX. ACCESS AND INSTITUTIONAL CONTROLS**

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

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

- 5 i. Monitoring the Work;
- 6 ii. Verifying any data or information submitted to the United States or the
7 State;
- 8 iii. Conducting investigations relating to contamination at or near the Site;
- 9 iv. Obtaining samples;
- 10 v. Assessing the need for, planning, or implementing additional response
11 actions at or near the Site;
- 12 vi. Assessing implementation of quality assurance and quality control
13 practices as defined in the approved Quality Assurance Project Plans;
- 14 vii. Implementing the Work pursuant to the conditions set forth in Paragraph
15 87 of this Consent Decree (Work Takeover);
- 16 viii. Inspecting and copying records, operating logs, contracts, or other
17 documents maintained or generated by Settling Defendant or its agents,
18 consistent with Section XXIV;
- 19 ix. Assessing Settling Defendant's compliance with this Consent Decree; and
- 20 x. Determining whether the Site or other property is being used in a manner
21 that is prohibited or restricted, or that may need to be prohibited or
22 restricted, by or pursuant to this Consent Decree;

1 b. commencing on the date of lodging of this Consent Decree, refrain from using the
2 Site, or such other property, in any manner that would interfere with or adversely affect the
3 implementation, integrity, or protectiveness of the remedial measures to be performed pursuant
4 to this Consent Decree to insure protection to public health and the environment. Such
5 restrictions include, but are not limited to,

- 6 i. any activities or property use that could compromise the integrity of the
7 cap, including construction of below-grade foundations or footers, borings
8 well installation, or placement of heavy equipment, trailers, or other similar
9 activities, without EPA's prior determination that such use could not
10 compromise the integrity of the cap;
- 11 ii. use or contact with ground water at the Site, via ingestion, vapor
12 installation or dermal contact; and,
- 13 iii. any activity that could interfere with the operation of the NAPL Recovery
14 and Ground Water treatment Systems, such as excavation and/or construction
15 within the area of the trenches or treatment system.

16 c. execute and record in the Recorder's Office or other appropriate land records
17 office of New Castle County, State of Delaware, an easement, running with the land, that (i)
18 grants a right of access for the purpose of conducting any activity related to this Consent Decree
19 including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree,
20 and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this
21 Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure
22 non-interference with, or ensure the protectiveness of the remedial measures to be performed

1 pursuant to this Consent Decree. Settling Defendant shall grant the access rights and the rights to
2 enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its
3 representatives, and (ii) the State, on behalf of DNREC and its representatives. Such Settling
4 Defendant shall, within forty-five (45) days of entry of this Consent Decree, submit to EPA for
5 review and approval with respect to such property:

6 (1) A draft easement, in substantially the form attached hereto as Appendix
7 , that is enforceable under the laws of the State of Delaware; and,

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

13 Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence,
14 such Settling Defendant shall update the title search and, if it is determined that nothing has
15 occurred since the effective date of the commitment to affect the title adversely, record the
16 easement with the Recorder's Office or other appropriate office of New Castle County, State of
17 Delaware. Within thirty (30) days of recording the easement, such Settling Defendant shall
18 provide EPA with a final title insurance policy, or other final evidence of title acceptable to
19 EPA, and a certified copy of the original recorded easement showing the clerk's recording
20 stamps. If the easement is to be conveyed to the United States, the easement and title evidence
21 (including final title evidence) shall be prepared in accordance with the U.S. Department of
22 Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required

1 by 40 U.S.C. § 255.

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

5 a. an agreement to provide access thereto for Settling Defendant, as well as for the
6 United States on behalf of EPA, and the State, as well as their representatives (including
7 contractors), for the purpose of conducting any activity related to this Consent Decree including,
8 but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree;

9 b. an agreement, enforceable by the Settling Defendant and the United States, to
10 refrain from using the Site, or such other property, in any manner that would interfere with or
11 adversely affect the implementation, integrity, or protectiveness of the remedial measures to be
12 performed pursuant to this Consent Decree to insure protection of public health and the
13 environment. Such restrictions include, but are not limited to:

14 i. any activities or property use that could compromise the integrity of the
15 cap, including construction of below-grade foundations or footers, borings
16 well installation, or placement of heavy equipment, trailers, or other similar
17 activities, without EPA's prior determination that such use could not
18 compromise the integrity of the cap;

19 ii. use or contact with ground water at the Site, via ingestion, vapor
20 installation or dermal contact; and,

21 iii. any activity that could interfere with the operation of the NAPL Recovery
22 and Ground Water treatment Systems, such as excavation and/or construction

1 within the area of the trenches or treatment system.

2 c. the execution and recordation in the Recorder's Office or other appropriate land
3 records office of New Castle County, State of Delaware, of an easement, running with the land,
4 that (i) grants a right of access for the purpose of conducting any activity related to this Consent
5 Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent
6 Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph
7 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to
8 implement, ensure non-interference with, or ensure the protectiveness of the remedial measures
9 to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce
10 land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its
11 representatives, (ii) the State, on behalf of DNREC, and its representatives, and, (iii) the Settling
12 Defendant and its representatives. Within forty-five (45) days of entry of this Consent Decree,
13 Settling Defendant shall submit to EPA for review and approval with respect to such property:

14
15 (1) A draft easement, in substantially the form attached hereto as Appendix
16 , that is enforceable under the laws of the State of Delaware; and

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

22 Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence,
23 such Settling Defendant shall update the title search and, if it is determined that nothing has

1 occurred since the effective date of the commitment to affect the title adversely, record the
2 easement with the Recorder's Office or other appropriate office of New Castle County, State of
3 Delaware. Within thirty (30) days of recording the easement, such Settling Defendant shall
4 provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA,
5 and a certified copy of the original recorded easement showing the clerk's recording stamps. If
6 the easement is to be conveyed to the United States, the easement and title evidence (including
7 final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title
8 Standards 2001, and approval of the sufficiency of title must be obtained as required by 40
9 U.S.C. § 255.

10 28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the
11 payment of reasonable sums of money in consideration of access, access easements, land/water
12 use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien
13 or encumbrance. If (a) any access or land/water use restriction agreements required by
14 Paragraphs 27(a) or 27(b) of this Consent Decree are not obtained within forty-five (45) days of
15 the date of entry of this Consent Decree, (b) any access easements or restrictive easements
16 required by Paragraph 27(c) of this Consent Decree are not submitted to EPA in draft form
17 within forty-five (45) days of the date of entry of this Consent Decree, or (c) Settling Defendant
18 is unable to obtain an agreement pursuant to Paragraph 26.c.(1) or Paragraph 27.c.(1) from the
19 holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the
20 easement being created pursuant to this Consent Decree within forty-five (45) days of the date of
21 entry of this Consent Decree, Settling Defendant shall promptly notify the United States in
22 writing, and shall include in that notification a summary of the steps that Settling Defendant has

1 taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as
2 it deems appropriate, assist Settling Defendant in obtaining access or land/water use restrictions,
3 either in the form of contractual agreements or in the form of easements running with the land, or
4 in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendant shall
5 reimburse the United States in accordance with the procedures in Section XVI (Payments for
6 Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such
7 access, land/water use restrictions, and/or the release/subordination of prior liens or
8 encumbrances including, but not limited to, the cost of attorney time and the amount of
9 monetary consideration paid or just compensation.

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

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

19 **X. REPORTING REQUIREMENTS**

20 31. In addition to any other requirement of this Consent Decree, Settling Defendant shall
21 submit to EPA and the State five (5) copies each of written monthly progress reports that: (a)

1 describe the actions which have been taken toward achieving compliance with this Consent
2 Decree during the previous month; (b) include a summary of all results of sampling and tests and
3 all other data received or generated by Settling Defendant or its contractors or agents in the
4 previous month; (c) identify all work plans, plans, and other deliverables required by this
5 Consent Decree completed and submitted during the previous month; (d) describe all actions,
6 including, but not limited to, data collection and implementation of work plans, which are
7 scheduled for the next six weeks and provide other information relating to the progress of
8 construction, including, but not limited to, critical path diagrams, Gantt charts, and Pert charts;
9 (e) include information regarding percentage of completion, unresolved delays encountered or
10 anticipated that may affect the future schedule for implementation of the Work, and a description
11 of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the
12 work plans or other schedules that Settling Defendant has proposed to EPA or that have been
13 approved by EPA; and (g) describe all activities undertaken in support of the Community
14 Relations Plan during the previous month and those to be undertaken in the next six weeks.
15 Settling Defendant shall submit these progress reports to EPA and the State by the tenth day of
16 every month following the lodging of this Consent Decree until EPA notifies the Settling
17 Defendant pursuant to Paragraph 51.b of Section XIV (Certification of Completion). If requested
18 by EPA or the State, Settling Defendant shall also provide briefings for EPA and the State to
19 discuss the progress of the Work.

20 32. The Settling Defendant shall notify EPA of any change in the schedule described in the
21 monthly progress report for the performance of any activity, including, but not limited to,
22 implementation of work plans, no later than seven (7) days prior to the performance of the

1 activity. Notwithstanding the foregoing, the Settling Defendant shall notify EPA of any change
2 in the schedule described in the monthly progress reports for the performance of data collection
3 no later than thirty (30) days prior to the performance of such activity.

4 33. Upon the occurrence of any event during performance of the Work that Settling
5 Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the
6 Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Defendant shall
7 within twenty-four (24) hours of the onset of such event orally notify the EPA Project
8 Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the
9 EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate
10 EPA Project Coordinator is available, the EPA Region III Hotline at (215) 814-3255. These
11 reporting requirements are in addition to the reporting required by CERCLA § 103 or EPCRA §
12 304.

13 34. Within twenty (20) days of the onset of such an event, Settling Defendant shall furnish
14 to Plaintiffs a written report, signed by the Settling Defendant's Project Coordinator, setting forth
15 the events which occurred and the measures taken, and to be taken, in response thereto. Within
16 thirty (30) days of the conclusion of such an event, Settling Defendant shall submit a report
17 setting forth all actions taken in response thereto.

18 35. Settling Defendant shall submit five (5) copies of all plans, reports, and data required by
19 the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to
20 EPA in accordance with the schedules set forth in such plans. Settling Defendant shall
21 simultaneously submit five (5) copies of all such plans, reports, and data to the State. Upon
22 request by EPA, Settling Defendant shall submit in EPA-specified electronic format all portions

1 of any report or other deliverable Settling Defendant is required to submit pursuant to the
2 provisions of this Consent Decree.

3 36. All reports and other documents submitted by Settling Defendant to EPA (other than the
4 monthly progress reports referred to above) which purport to document Settling Defendant's
5 compliance with the terms of this Consent Decree shall be signed by a Duly Authorized
6 Representative of the Settling Defendant.

7 **XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS**

8 37. After review of any plan, report or other item which is required to be submitted for
9 approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and
10 comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the
11 submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d)
12 disapprove, in whole or in part, the submission, directing that the Settling Defendant modify the
13 submission; or (e) any combination of the above. However, EPA shall not modify a submission
14 without first providing Settling Defendant at least one notice of deficiency and an opportunity to
15 cure within fourteen (14) days, or such other time as specified by EPA in such notice, except
16 where to do so would cause serious disruption to the Work, or where previous submission(s)
17 have been disapproved due to material defects and the deficiencies in the submission under
18 consideration indicate to EPA a bad faith lack of effort to submit an acceptable deliverable.

19 38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to
20 Paragraph 37(a), (b), or (c), Settling Defendant shall proceed to take any action required by the
21 plan, report, or other item, as approved or modified by EPA subject only to their right to invoke

1 the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to
2 the modifications or conditions made by EPA. In the event that EPA modifies the submission to
3 cure the deficiencies pursuant to Paragraph 37(c) and the submission has a material defect, EPA
4 retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

5 39. a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling
6 Defendant shall, within fourteen (14) days, or such other time as specified by EPA in such notice,
7 correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated
8 penalties applicable to the submission, as provided in Section XX, shall accrue during the
9 fourteen (14)-day period, or otherwise specified period, but shall not be payable unless the
10 resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40
11 and 41.

12 b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph
13 37(d), Settling Defendant shall proceed, at the direction of EPA, to take any action required by
14 any non-deficient portion of the submission. Implementation of any non-deficient portion of a
15 submission shall not relieve Settling Defendant of any liability for stipulated penalties under
16 Section XX (Stipulated Penalties).

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

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

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

15 **XII. PROJECT COORDINATORS**

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

17 **EPA Project Coordinator:**

18 Matthew T. Mellon (3HS23)
19 U.S. Environmental Protection Agency
20 1650 Arch Street
21 Philadelphia, PA 19103
22 (215) 814-3168(phone)
23 (215) 814-3002 (telefax)
24

EPA Alternate Project Coordinator:

Anthony T. Dappolone (3HS23)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814-3188(phone)
(215) 814-3002(telefax)

Within twenty (20) days of lodging this Consent Decree, Settling Defendant and the State will notify each other and EPA, 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 (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator and Alternate Project Coordinator shall be subject to acceptance or disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator and Alternate Project Coordinator shall not be an attorney for the Settling Defendant in this matter. The Settling Defendant's Project Coordinator and Alternate Project Coordinator may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. 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

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

7 45. EPA's Project Coordinator and the Settling Defendant' Project Coordinator will meet, at
8 a minimum, on a monthly basis, unless otherwise agreed to by EPA.

9 **XIII. ASSURANCE OF ABILITY TO COMPLETE WORK**

10 46. Within thirty (30) days of entry of this Consent Decree, Settling Defendant shall
11 establish and maintain financial security in the amount of \$67.3 million in one or more of the
12 following forms:

13 (a) A surety bond guaranteeing performance of the Work;

14 (b) One or more irrevocable letters of credit equaling the total estimated cost of the
15 Work;

16 (c) A trust fund;

17 (d) A guarantee to perform the Work by one or more parent corporations or
18 subsidiaries, or by one or more unrelated corporations that have a substantial business
19 relationship with the Settling Defendant; or,

20 (e) A demonstration that the Settling Defendant satisfies the requirements of 40
21 C.F.R. § 264.143(f).

1 Such financial security shall be maintained by the Settling Defendant until EPA agrees that the
2 Work has been completed and issues a Certification of Completion in accordance with Paragraph
3 51.b.

4 47. If the Settling Defendant seeks to demonstrate the ability to complete the Work through
5 a guarantee by a third party pursuant to Paragraph 46(d) of this Consent Decree, Settling
6 Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. §
7 264.143(f). If Settling seeks to demonstrate their ability to complete the Work by means of the
8 financial test or the corporate guarantee pursuant to Paragraph 46(d) or (e), they shall resubmit
9 sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on
10 the anniversary of the Effective Date. In the event that EPA, after a reasonable opportunity for
11 review and comment by the State, determines at any time that the financial assurances provided
12 pursuant to this Section are inadequate, Settling Defendant shall, within thirty (30) days of
13 receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other
14 forms of financial assurance listed in Paragraph 46 of this Consent Decree. Settling Defendant'
15 inability to demonstrate financial ability to complete the Work shall not excuse performance of
16 any activities required under this Consent Decree.

17 48. If Settling Defendant can show that the estimated cost to complete the remaining Work
18 has diminished below the amount set forth in Paragraph 46 above after entry of this Consent
19 Decree, Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at
20 any other time agreed to by the Parties, reduce the amount of the financial security provided
21 under this Section to the estimated cost of the remaining work to be performed. Settling
22 Defendant shall submit a proposal for such reduction to EPA, in accordance with the

1 requirements of this Section, and may reduce the amount of the security upon approval by EPA.
2 In the event of a dispute, Settling Defendant may reduce the amount of the security in accordance
3 with the final administrative or judicial decision resolving the dispute.

4 49. Settling Defendant may change the form of financial assurance provided under this
5 Section at any time, upon notice to and approval by EPA, provided that the new form of
6 assurance meets the requirements of this Section. In the event of a dispute, Settling Defendant
7 may change the form of the financial assurance only in accordance with the final administrative
8 or judicial decision resolving the dispute.

9 **XIV. CERTIFICATION OF COMPLETION**

10 **50. Completion of the Remedial Action**

11 a. Within ninety (90) days after Settling Defendant concludes that the Remedial
12 Action has been fully performed and the Performance Standards have been attained, Settling
13 Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling
14 Defendant, EPA, and the State. If, after the pre-certification inspection, the Settling Defendant
15 still believes that the Remedial Action has been fully performed and the Performance Standards
16 have been attained, it shall submit a written report requesting certification to EPA for approval,
17 with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions)
18 within thirty (30) days of the inspection. In the report, a registered professional engineer and the
19 Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed
20 in full satisfaction of the requirements of this Consent Decree. The written report shall include
21 as-built drawings signed and stamped by a professional engineer. The report shall contain the

1 following statement, signed by a Duly Authorized Representative of a Settling Defendant or the
2 Settling Defendant's Project Coordinator:

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

7 If, after completion of the pre-certification inspection and receipt and review of the written
8 report, EPA, after reasonable opportunity for review and comment by the State, determines that
9 the Remedial Action or any portion thereof has not been completed in accordance with this
10 Consent Decree or that the Performance Standards have not been achieved, EPA will notify
11 Settling Defendant in writing of the activities that must be undertaken by Settling Defendant
12 pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance
13 Standards. Provided, however, that EPA may only require Settling Defendant to perform such
14 activities pursuant to this Paragraph to the extent that such activities are consistent with the
15 "scope of the remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will
16 set forth in the notice a schedule for performance of such activities consistent with the Consent
17 Decree or require the Settling Defendant to submit a schedule to EPA for approval pursuant to
18 Section XI (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform
19 all activities described in the notice in accordance with the specifications and schedules
20 established pursuant to this Paragraph, subject to their right to invoke the dispute resolution
21 procedures set forth in Section XIX (Dispute Resolution).

22 b. If EPA concludes, based on the initial or any subsequent report requesting
23 Certification of Completion and after a reasonable opportunity for review and comment by the
24 State, that the Remedial Action has been performed in accordance with this Consent Decree and

1 that the Performance Standards have been achieved, EPA will so certify in writing to Settling
2 Defendant. This certification shall constitute the Certification of Completion of the Remedial
3 Action for purposes of this Consent Decree, including, but not limited to, Section XXI
4 (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall
5 not affect Settling Defendant's obligations under this Consent Decree.

6 **51. Completion of the Work**

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

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

20 If, after review of the written report, EPA, after reasonable opportunity for review and comment
21 by the State, determines that any portion of the Work has not been completed in accordance with
22 this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be
23 undertaken by Settling Defendant pursuant to this Consent Decree to complete the Work.
24 Provided, however, that EPA may only require Settling Defendant to perform such activities

1 pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the
2 remedy selected in the ROD," as that term is defined in Paragraph 14.b. EPA will set forth in the
3 notice a schedule for performance of such activities consistent with the Consent Decree or
4 require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI
5 (EPA Approval of Plans and Other Submissions). Settling Defendant shall perform all activities
6 described in the notice in accordance with the specifications and schedules established therein,
7 subject to their right to invoke the dispute resolution procedures set forth in Section XIX
8 (Dispute Resolution).

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

13 **XV. EMERGENCY RESPONSE**

14 52. In the event of any action or occurrence during the performance of the Work which
15 causes or threatens a release of Waste Material from the Site that constitutes an emergency
16 situation or may present an immediate threat to public health or welfare or the environment,
17 Settling Defendant shall, subject to Paragraph 53, immediately take all appropriate action to
18 prevent, abate, or minimize such release or threat of release, and shall immediately notify the
19 EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project
20 Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA
21 Region III Hotline at (215) 814-3255. Settling Defendant shall take such actions in consultation

1 with EPA's Project Coordinator or other available authorized EPA officer and in accordance with
2 all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other
3 applicable plans or documents developed pursuant to this Consent Decree. In the event that
4 Settling Defendant fails to take appropriate response action as required by this Section, and EPA
5 or, as appropriate, the State takes such action instead, Settling Defendant shall reimburse EPA
6 and the State all costs of the response action not inconsistent with the NCP pursuant to Section
7 XVI (Payments for Response Costs).

8 53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit
9 any authority of the United States, or the State, to (a) take all appropriate action to protect human
10 health and the environment or to prevent, abate, respond to, or minimize an actual or threatened
11 release of Waste Material on, at, or from the Site, or (b) direct or order such action, or seek an
12 order from the Court, to protect human health and the environment or to prevent, abate, respond
13 to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject
14 to Section XXI (Covenants Not to Sue by Plaintiffs).

15 **XVI. PAYMENTS FOR RESPONSE COSTS**

16 **54. Payments for Past Response Costs.**

17 a. Within 30 days of the Effective Date, Settling Defendant shall pay to EPA
18 \$371,023.95 (Certified Two-Page Cost Summary Report dated August 31, 2005) in payment for
19 Past Response Costs. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to
20 the U.S. Department of Justice account in accordance with current EFT procedures, referencing
21 USAO File Number ____, EPA Site/Spill ID No. 033c and DOJ # 90-11-3-08619. Payment shall

1 be made in accordance with instructions provided to the Settling Defendant by the Financial
2 Litigation Unit of the United States Attorney's Office for the District of Delaware following
3 lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00
4 p.m. (Eastern Time) will be credited on the next business day. Settling Defendant shall send
5 notice that such payment has been made to the United States as specified in Section XXVI
6 (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental
7 Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. The total amount to be paid by
8 Settling Defendant pursuant to Subparagraph 54.a shall be deposited in the Koppers (Newport)
9 Special Account within the EPA Hazardous Substance Superfund to be retained and used to
10 conduct or finance response actions at or in connection with the Site, or to be transferred by EPA
11 to the EPA Hazardous Substance Superfund.

12 b. Within thirty (30) days of the Effective Date, Settling Defendant shall pay to the State (\$
13 Cost Summary requested from the STATE) in the form of a certified or cashier's check or checks
14 made payable to the State of Delaware, in reimbursement of State Past Response Costs. The
15 Settling Defendant shall send the certified or cashier's check(s) to STATE TO INSERT
16 ADDRESS.

17 55. Payments for Future Response Costs.

18 a. Settling Defendant shall pay to EPA all Future Response Costs not inconsistent
19 with the National Contingency Plan. On a periodic basis, the United States will send Settling
20 Defendant a bill requiring payment that includes a cost summary, setting forth direct and indirect
21 costs incurred by EPA, DOJ, and their contractors. Settling Defendant shall make all payments
22 within thirty (30) days of Settling Defendant's receipt of each bill requiring payment, except as

1 otherwise provided in Paragraph 56. Settling Defendant shall make all payments required by this
2 Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous
3 Substance Superfund," and referencing the name and address of the party making the payment,
4 EPA Site/Spill ID No. 033c, and DOJ # 90-11-3-08619. Settling Defendant shall send the
5 check(s) to United States Environmental Protection Agency, Region III, Attention: Superfund
6 Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, and shall send copies of the check(s)
7 to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket
8 Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street,
9 Philadelphia, PA 19103. The total amount to be paid by Settling Defendant pursuant to
10 Subparagraph 55.a. shall be deposited in the Koppers (Newport) Special Account within the EPA
11 Hazardous Substance Superfund to be retained and used to conduct or finance response actions at
12 or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance
13 Superfund.

14 b. Settling Defendant shall reimburse the State for all State Future Response Costs
15 not inconsistent with the National Contingency Plan. The State will send Settling Defendant a
16 bill requiring payment that includes a **[Insert name of standard State-prepared cost summary,**
17 **which includes direct and indirect costs incurred by the State and its contractors]** on a
18 periodic basis. Settling Defendant shall make all payments within thirty (30) days of Settling
19 Defendant's receipt of each bill requiring payment, except as otherwise provided in
20 Paragraph 56. The Settling Defendant shall make all payments to the State required by this
21 Paragraph in the manner described in Paragraph 54.b.

22 c. Notwithstanding Paragraph 55.a, the Settling Defendant shall be obligated to

1 reimburse the United States for oversight costs incurred in connection with Remedial Design and
2 oversight of Removal Actions only if the decision in United States v. Rohm & Haas Co., No. 92-
3 1517 (3rd Cir. Aug. 12, 1993), regarding the liability of responsible parties under Section
4 107(a)(4)(A) of CERCLA for EPA oversight costs is reversed or overturned by the Court of
5 Appeals for the Third Circuit, the United States Supreme Court, or the United States Congress
6 through amendment to CERCLA or otherwise. Nothing in this Paragraph 55.c shall be deemed
7 to be an adjudication by this Court or an admission by EPA or the United States or shall be
8 admissible in any other proceeding as to the legal issue whether oversight costs are properly
9 recoverable under Section 107 of CERCLA or pursuant to a settlement of such an action.]

10 56. Settling Defendant may contest payment of any Future Response Costs under
11 Paragraph 55 if they determine that the United States or the State has made an accounting error
12 or if they allege that a cost item that is included represents costs that are inconsistent with the
13 NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be
14 sent to the United States [(if the United States' accounting is being disputed) or the State (if the
15 State's accounting is being disputed)] pursuant to Section XXVI (Notices and Submissions). Any
16 such objection shall specifically identify the contested Future Response Costs and the basis for
17 objection. In the event of an objection, the Settling Defendant shall within the 30 day period pay
18 all uncontested Future Response Costs to the United States [or the State] in the manner described
19 in Paragraph 55. Simultaneously, the Settling Defendant shall establish an interest-bearing
20 escrow account in a federally-insured bank duly chartered in the State of Delaware and remit to
21 that escrow account funds equivalent to the amount of the contested Future Response Costs. The
22 Settling Defendant shall send to the United States, as provided in Section XXVI (Notices and

1 Submissions), and the State a copy of the transmittal letter and check paying the uncontested
2 Future Response Costs, and a copy of the correspondence that establishes and funds the escrow
3 account, including, but not limited to, information containing the identity of the bank and bank
4 account under which the escrow account is established as well as a bank statement showing the
5 initial balance of the escrow account. Simultaneously with establishment of the escrow account,
6 the Settling Defendant shall initiate the Dispute Resolution procedures in Section XIX (Dispute
7 Resolution). If the United States or the State prevails in the dispute, within 5 days of the
8 resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to
9 the United States or the State, if State costs are disputed, in the manner described in
10 Paragraph 55. If the Settling Defendant prevails concerning any aspect of the contested costs, the
11 Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which
12 they did not prevail to the United States or the State, if State costs are disputed in the manner
13 described in Paragraph 55; Settling Defendant shall be disbursed any balance of the escrow
14 account. The dispute resolution procedures set forth in this Paragraph in conjunction with the
15 procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for
16 resolving disputes regarding the Settling Defendant's obligation to reimburse the United States
17 and the State for their Future Response Costs.

18 57. In the event that the payments required by Subparagraph 54 are not made within thirty
19 (30) days of the Effective Date or the payments required by Paragraph 55 are not made within
20 thirty (30) days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay
21 Interest on the unpaid balance. The Interest to be paid on Past Response Costs and State Past
22 Response Costs under this Paragraph shall begin to accrue on the Effective Date. The Interest on

1 Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue
2 through the date of the Settling Defendant's payment. Payments of Interest made under this
3 Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue
4 of Settling Defendant's failure to make timely payments under this Section including, but not
5 limited to, payment of stipulated penalties pursuant to Paragraph 72. The Settling Defendant
6 shall make all payments required by this Paragraph in the manner described in Paragraph 55.

7 **XVII. INDEMNIFICATION AND INSURANCE**

8 58. a. The United States and the State do not assume any liability by entering into this
9 agreement or by virtue of any designation of Settling Defendant as EPA's authorized
10 representatives under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save, and
11 hold harmless the United States, the State, and their officials, agents, employees, contractors,
12 subcontractors, or representatives for or from any and all claims or causes of action arising from,
13 or on account of, negligent or other wrongful acts or omissions of Settling Defendant, its officers,
14 directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or
15 under its control, in carrying out activities pursuant to this Consent Decree, including, but not
16 limited to, any claims arising from any designation of Settling Defendant as EPA's authorized
17 representatives under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay
18 the United States and the State all costs they incur including, but not limited to, attorneys fees
19 and other expenses of litigation and settlement arising from, or on account of, claims made
20 against the United States or the State based on negligent or other wrongful acts or omissions of
21 Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any

1 persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent
2 Decree. Neither the United States nor the State shall be held out as a party to any contract
3 entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this
4 Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an
5 agent of the United States or the State.

6 b. The United States and the State shall give Settling Defendant notice of any claim
7 for which the United States or the State plan to seek indemnification pursuant to Paragraph 58.a.,
8 and shall consult with Settling Defendant prior to settling such claim.

9 59. Settling Defendant waives all claims against the United States and the State for damages
10 or reimbursement or for set-off of any payments made or to be made to the United States or the
11 State, arising from or on account of any contract, agreement, or arrangement between Settling
12 Defendant and any person for performance of Work on or relating to the Site, including, but not
13 limited to, claims on account of construction delays. In addition, Settling Defendant shall
14 indemnify and hold harmless the United States and the State with respect to any and all claims
15 for damages or reimbursement arising from or on account of any contract, agreement, or
16 arrangement between Settling Defendant and any person for performance of Work on or relating
17 to the Site, including, but not limited to, claims on account of construction delays.

18 60. No later than fifteen (15) days before commencing any on-site Work, Settling Defendant
19 shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion
20 of the Remedial Action pursuant to Paragraph 50.b. of Section XIV (Certification of Completion)
21 comprehensive general liability insurance with limits of five million dollars, combined single
22 limit, and automobile liability insurance with limits of \$500,000, combined single limit, naming

1 the United States and the State as additional insureds. In addition, for the duration of this
2 Consent Decree, Settling Defendant shall satisfy, or shall ensure that its contractors or
3 subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's
4 compensation insurance for all persons performing the Work on behalf of Settling Defendant in
5 furtherance of this Consent Decree. Prior to commencement of the Work under this Consent
6 Decree, Settling Defendant shall provide to EPA and the State certificates of such insurance and
7 a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of
8 policies each year on the anniversary of the Effective Date of this Consent Decree. If Settling
9 Defendant demonstrates by evidence satisfactory to EPA and the State that any contractor or
10 subcontractor maintains insurance equivalent to that described above, or insurance covering the
11 same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling
12 Defendant need provide only that portion of the insurance described above which is not
13 maintained by the contractor or subcontractor. Settling Defendant may satisfy the provisions of
14 this Paragraph 60 if they submit to EPA for approval one of the financial assurance mechanisms
15 of Section XIII (Assurance of Ability to Complete Work) in at least the amounts stated in this
16 Paragraph 60 demonstrating that Settling Defendant is able to pay any claims arising out of
17 Settling Defendant's performance of their obligations under this Consent Decree. Such financial
18 assurance mechanism shall meet all of the requirements of Section XIII (Assurance of Ability to
19 Complete Work). If Settling Defendant seeks to utilize the mechanisms set forth in Section XIII
20 (Assurance of Ability to Complete Work) to satisfy the provisions of this Paragraph 60, they
21 must demonstrate an ability to pay the amounts required under this Paragraph, above and beyond
22 that required by the obligations of Section XIII (Assurance of Ability to Complete Work).

XVIII. FORCE MAJEURE

61. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by Settling Defendant, or of Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work, a failure to attain the Performance Standards, or increased costs.

62. 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 Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the EPA Region III Hazardous Site Cleanup Division, within forty-eight (48) hours of when Settling Defendant first knew that the event might cause a delay. Within five (5) days thereafter, Settling Defendant 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 Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim;

1 and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or
2 contribute to an endangerment to public health, welfare or the environment. The Settling
3 Defendant shall include with any notice all available documentation supporting its claim that the
4 delay was attributable to a force majeure. Failure to comply with the above requirements shall
5 preclude Settling Defendant from asserting any claim of force majeure for that event for the
6 period of time of such failure to comply, and for any additional delay caused by such failure.
7 Settling Defendant shall be deemed to know of any circumstance of which Settling Defendant,
8 any entity controlled by Settling Defendant, or Settling Defendant's contractors knew or should
9 have known.

10 63. If EPA , after a reasonable opportunity for review and comment by the State, agrees that
11 the delay or anticipated delay is attributable to a force majeure event, the time for performance of
12 the obligations under this Consent Decree that are affected by the force majeure event will be
13 extended by EPA, after a reasonable opportunity for review and comment by the State, for such
14 time as is necessary to complete those obligations on an expedited basis. An extension of the
15 time for performance of the obligations affected by the force majeure event shall not, of itself,
16 extend the time for performance of any other obligation. If EPA, after a reasonable opportunity
17 for review and comment by the State, does not agree that the delay or anticipated delay has been
18 or will be caused by a force majeure event, EPA will notify the Settling Defendant in writing of
19 its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees
20 that the delay is attributable to a force majeure event, EPA will notify the Settling Defendant in
21 writing of the length of the extension, if any, for performance of the obligations affected by the
22 force majeure event.

1 64. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in
2 Section XIX (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of
3 EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating
4 by a preponderance of the evidence that the delay or anticipated delay has been or will be caused
5 by a force majeure event, that the duration of the delay or the extension sought was or will be
6 warranted under the circumstances, that best efforts were exercised to avoid and mitigate the
7 effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 61
8 and 62, above. If Settling Defendant carries this burden, the delay at issue shall be deemed not to
9 be a violation by Settling Defendant of the affected obligation of this Consent Decree identified
10 to EPA and the Court.

11 **XIX. DISPUTE RESOLUTION**

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

17 66. Any dispute which arises under or with respect to this Consent Decree shall in the first
18 instance be the subject of informal negotiations between the parties to the dispute. The period
19 for informal negotiations shall not exceed twenty (20) days from the time the dispute arises,
20 unless it is modified by written agreement of the parties to the dispute. The dispute shall be
21

1 considered to have arisen when one party sends the other parties a written Notice of Dispute.

2 67. a. In the event that the parties cannot resolve a dispute by informal negotiations under
3 the preceding Paragraph, then the position advanced by EPA shall be considered binding unless,
4 within ten (10) days after the conclusion of the informal negotiation period, Settling Defendant
5 invokes the formal dispute resolution procedures of this Section by serving on the United States
6 and the State a written Statement of Position on the matter in dispute, including, but not limited
7 to, any factual data, analysis or opinion supporting that position and any supporting
8 documentation relied upon by the Settling Defendant. The Statement of Position shall specify
9 the Settling Defendant's position as to whether formal dispute resolution should proceed under
10 Paragraph 68 or Paragraph 69.

11 b. Within fourteen (14) days after receipt of Settling Defendant's Statement of
12 Position, EPA will serve on Settling Defendant its Statement of Position, including, but not
13 limited to, any factual data, analysis, or opinion supporting that position and all supporting
14 documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to
15 whether formal dispute resolution should proceed under Paragraph 68 or 69. Within seven (7)
16 days after receipt of EPA's Statement of Position, Settling Defendant may submit a Reply.

17 c. If there is disagreement between EPA and the Settling Defendant as to whether
18 dispute resolution should proceed under Paragraph 68 or 69, the parties to the dispute shall
19 follow the procedures set forth in the Paragraph determined by EPA to be applicable. However,
20 if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall
21 determine which Paragraph is applicable in accordance with the standards of applicability set
22 forth in Paragraphs 68 and 69.

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

10 a. An administrative record of the dispute shall be maintained by EPA and shall
11 contain all statements of position, including supporting documentation, submitted pursuant to
12 this Section. Where appropriate, EPA may allow submission of supplemental statements of
13 position by the parties to the dispute.

14 b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue
15 a final administrative decision resolving the dispute based on the administrative record described
16 in Paragraph 68.a. This decision shall be binding upon the Settling Defendant, subject only to
17 the right to seek judicial review pursuant to Paragraph 68.c. and d.

18 c. Any administrative decision made by EPA pursuant to Paragraph 68.b. shall be
19 reviewable by this Court, provided that a motion for judicial review of the decision is filed by the
20 Settling Defendant with the Court and served on all Parties within ten (10) days of receipt of
21 EPA's decision. The motion shall include a description of the matter in dispute, the efforts made
22 by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute

1 must be resolved to ensure orderly implementation of this Consent Decree. The United States
2 may file a response to Settling Defendant's motion.

3 d. In proceedings on any dispute governed by this Paragraph, Settling Defendant
4 shall have the burden of demonstrating that the decision of the Director of the Hazardous Site
5 Cleanup Division, EPA Region III, is arbitrary and capricious or otherwise not in accordance
6 with law. Judicial review of EPA's decision shall be on the administrative record compiled
7 pursuant to Paragraph 68.a.

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

11 a. Following receipt of Settling Defendant's Statement of Position submitted
12 pursuant to Paragraph 67, the Director of the Hazardous Site Cleanup Division, EPA Region III,
13 will issue a final decision resolving the dispute. The Director's decision shall be binding on the
14 Settling Defendant unless, within ten (10) days of receipt of the decision, the Settling Defendant
15 file with the Court and serve on the parties a motion for judicial review of the decision setting
16 forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and
17 the schedule, if any, within which the dispute must be resolved to ensure orderly implementation
18 of the Consent Decree. The United States may file a response to Settling Defendant's motion.

19 b. Notwithstanding Paragraph L of Section I (Background) of this Consent Decree,
20 judicial review of any dispute governed by this Paragraph shall be governed by applicable
21 principles of law.

22 70. The invocation of formal dispute resolution procedures under this Section shall not

1 extend, postpone, or affect in any way any obligation of the Settling Defendant under this
2 Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated
3 penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed
4 pending resolution of the dispute as provided in Paragraph 79. Notwithstanding the stay of
5 payment, stipulated penalties shall accrue from the first day of noncompliance with any
6 applicable provision of this Consent Decree. In the event that the Settling Defendant does not
7 prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in
8 Section XX (Stipulated Penalties).

9 **XX. STIPULATED PENALTIES**

10 71. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in
11 Paragraphs 72 and 73 to the United States (50%) and the State (50%) for failure to comply with
12 the requirements of this Consent Decree specified below, unless excused under Section XVIII
13 (Force Majeure). "Compliance" by Settling Defendant shall include completion of the activities
14 under this Consent Decree or any work plan or other plan approved under this Consent Decree
15 identified below in accordance with all applicable requirements of law, this Consent Decree, and
16 any plans or other documents approved by EPA pursuant to this Consent Decree and within the
17 specified time schedules established by and approved under this Consent Decree.

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

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 5,000.00	1 st through 14 th day
\$10,000.00	15 th through 30 th day

\$15,000.00	31 st day and beyond
-------------	---------------------------------

b. Failure to comply with requirements of Section VI (Performance of the Work by Settling Defendant), Section VII (Remedy Review), Section VIII (Quality Assurance, Sampling, and Data Analysis), Section XI (EPA Approval of Plans and Other Submissions), Section XV (Emergency Response), and Section XVI (Payments for Response Costs).

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

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 1,000.00	1 st through 14 th day.
\$ 2,000.00	15 th through 30 th day
\$ 3,000.00	31 st day and beyond

b. All requirements of this Consent Decree that are not identified in Paragraph 72(b) of this Consent Decree.

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 of Section XXI (Covenants Not to Sue by Plaintiffs), Settling Defendant shall be liable for a stipulated penalty in the amount of \$250,000.

75. 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 Defendant of any deficiency; (2) with respect

1 to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under
2 Paragraph 68.b. or 69.a. of Section XIX (Dispute Resolution), during the period, if any,
3 beginning on the 21st day after the date that Settling Defendant's reply to EPA's Statement of
4 Position is received until the date that the Director of the Hazardous Site Cleanup Division, EPA
5 Region III, issues a final decision regarding such dispute; or (3) with respect to judicial review by
6 this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any,
7 beginning on the 31st day after the Court's receipt of the final submission regarding the dispute
8 until the date that the Court issues a final decision regarding such dispute. Nothing herein shall
9 prevent the simultaneous accrual of separate penalties for separate violations of this Consent
10 Decree.

11 76. Following EPA's determination that Settling Defendant has failed to comply with a
12 requirement of this Consent Decree, EPA may give Settling Defendant written notification of the
13 same and describe the noncompliance. EPA and the State may send the Settling Defendant a
14 written demand for the payment of the penalties. However, penalties shall accrue as provided in
15 the preceding Paragraph regardless of whether EPA has notified the Settling Defendant of a
16 violation.

17 77. All penalties accruing under this Section shall be due and payable to the United States
18 and the State within thirty (30) days of the Settling Defendant's receipt from EPA of a demand
19 for payment of the penalties, unless Settling Defendant invoke the Dispute Resolution procedures
20 under Section XIX (Dispute Resolution). All payments to the United States under this Section
21 shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances
22 Superfund," shall be mailed to the United States Environmental Protection Agency, Region III,

1 Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 125251-6515, shall indicate
2 that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID
3 #03 __, the DOJ # 90-11-3-08619, and the name and address of the party making payment.

4 Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s),
5 shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to
6 the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650
7 Arch Street, Philadelphia, PA 19103. **STATE TO INSERT ITS PROCEDURES.**

8 78. The payment of penalties shall not alter in any way Settling Defendant's obligation to
9 complete the performance of the Work required under this Consent Decree.

10 79. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute
11 resolution period, but need not be paid until the following:

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

15 b. If the dispute is appealed to this Court and the United States prevails in whole or
16 in part, Settling Defendant shall pay all accrued penalties determined by the Court to be owed to
17 EPA and the State within sixty (60) days of receipt of the Court's decision or order, except as
18 provided in Subparagraph c below;

19 c. If the District Court's decision is appealed by any Party, Settling Defendant shall
20 pay all accrued penalties determined by the District Court to be owing to the United States or the
21 State into an interest-bearing escrow account within sixty (60) days of receipt of the Court's
22 decision or order. Penalties shall be paid into this account as they continue to accrue, at least

every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the State or to Settling Defendant to the extent that they prevail.

80. a. If Settling Defendant fails to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as interest. Settling Defendant shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 77.

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 Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that for any particular violation of this Consent Decree, the United States shall be limited to either demanding stipulated penalties pursuant to this Section XX of the Consent Decree or pursuing civil penalties pursuant to Section 122(l) of CERCLA, except in the case of a willful violation of the Consent Decree.

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

XXI. COVENANTS NOT TO SUE BY PLAINTIFFS

82. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically

1 provided in Paragraphs 83, 84, and 86 of this Section, the United States covenants not to sue or
2 to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of
3 CERCLA relating to the Site. Except with respect to future liability, these covenants not to sue
4 shall take effect upon the receipt by EPA of the payments required by Paragraph 54 of Section
5 XVI (Payments for Response Costs). With respect to future liability, these covenants not to sue
6 shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to
7 Paragraph 50.b of Section XIV (Certification of Completion). These covenants not to sue are
8 conditioned upon the satisfactory performance by Settling Defendant of its obligations under this
9 Consent Decree. These covenants not to sue extend only to the Settling Defendant and do not
10 extend to any other person.

11 83. United States' Pre-Certification Reservations. Notwithstanding any other provision of
12 this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to,
13 the right to institute proceedings in this action or in a new action, or to issue an administrative
14 order seeking to compel Settling Defendant (1) to perform further response actions relating to the
15 Site or (2) to reimburse the United States for additional costs of response if, prior to Certification
16 of Completion of the Remedial Action:

17 (i) conditions at the Site, previously unknown to EPA, are discovered, or
18 (ii) information, previously unknown to EPA, is received, in whole or in part,
19 and EPA determines that these previously unknown conditions or information together with any
20 other relevant information indicates that the Remedial Action is not protective of human health
21 or the environment.

22 84. United States' Post-Certification Reservations. Notwithstanding any other provision of

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

- 6 (i) conditions at the Site, previously unknown to EPA, are discovered, or
- 7 (ii) information, previously unknown to EPA, is received,
8 in whole or in part,

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

12 85. For purposes of Paragraph 83, the information and the conditions known to EPA shall
13 include only that information and those conditions known to EPA as of the date the ROD was
14 signed and set forth in the Record of Decision for the Site and the administrative record
15 supporting the Record of Decision. For purposes of Paragraph 84, the information and the
16 conditions known to EPA shall include only that information and those conditions known to EPA
17 as of the date of Certification of Completion of the Remedial Action and set forth in the Record
18 of Decision, the administrative record supporting the Record of Decision, the post-ROD
19 administrative record, or in any information received by EPA pursuant to the requirements of this
20 Consent Decree prior to Certification of Completion of the Remedial Action.

21 86. General reservations of rights. The covenants not to sue set forth above do not pertain
22 to any matters other than those expressly specified in Paragraph 82. The United States reserves,

1 and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect
2 to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any
3 other provision of this Consent Decree, the United States reserves all rights against Settling
4 Defendant with respect to:

5 (1) claims based on a failure by Settling Defendant to meet a requirement of this
6 Consent Decree;

7 (2) liability arising from the past, present, or future disposal, release, or threat of
8 release of Waste Material outside of the Site;

9 (3) liability based upon the Settling Defendant's ownership or operation of the Site,
10 or upon the Settling Defendant's transportation, treatment, storage, or disposal, or the
11 arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in
12 connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered
13 by EPA, after signature of this Consent Decree by the Settling Defendant;

14 (4) liability for damages for injury to, destruction of, or loss of natural resources, and
15 for the costs of any natural resource damage assessments;

16 (5) criminal liability;

17 (6) liability for violations of federal or state law which occur during or after
18 implementation of the Remedial Action;

19 (7) liability, prior to Certification of Completion of the Remedial Action, for
20 additional response actions that EPA determines are necessary to achieve Performance
21 Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the
22 Work); and

1 (8) liability for costs that the United States will incur related to the Site but are not
2 within the definition of Future Response Costs.

3 87. Work Takeover. In the event EPA determines that Settling Defendant has ceased
4 implementation of any portion of the Work, are seriously or repeatedly deficient or late in their
5 performance of the Work, or are implementing the Work in a manner which may cause an
6 endangerment to human health or the environment, EPA may assume the performance of all or
7 any portions of the Work as EPA determines necessary. Settling Defendant may invoke the
8 procedures set forth in Section XIX (Dispute Resolution), Paragraph 68, to dispute EPA's
9 determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the
10 United States in performing the Work pursuant to this Paragraph shall be considered Future
11 Response Costs that Settling Defendant shall pay pursuant to Section XVI (Payment for
12 Response Costs).

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

16 **INSERT State's Covenant Not to Sue the Settling Defendant and Reservation of Rights.**

17 **XXII. COVENANTS BY SETTLING DEFENDANT**

18 89. Covenant Not to Sue. Subject to the reservations in Paragraph 90, Settling Defendant
19 hereby covenants not to sue and agrees not to assert any claims or causes of action against the
20 United States or the State with respect to the Site and Past and Future Response Costs as defined
21 herein or this Consent Decree, including, but not limited to:

- 22 a. any direct or indirect claim for reimbursement from the Hazardous Substance

1 Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through
2 CERCLA §§ 106(b)(2), 107, 111, 112, 113, or any other provision of law;

3 b. any claims against the United States, including any department, agency or
4 instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

5 c. any claims arising out of response actions at or in connection with the Site,
6 including any claim under the United States Constitution, the [State] Constitution, the Tucker
7 Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at
8 common law.

9 Except as provided in Paragraph 92(a) (Waiver of Claims Against *De Micromis* Parties),
10 Paragraph 92(b) (Waiver of Claims Against *De Minimis* Parties), and Paragraph 97 (waiver of
11 Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United
12 States or the State brings a cause of action or issues an order pursuant to the reservations set forth
13 in Paragraphs 83, 84, 86(2) - (4) or 86(7) - (9), but only to the extent that Settling Defendant's
14 claims arise from the same response action, response costs, or damages that the United States or
15 the State is seeking pursuant to the applicable reservation.

16 90. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims
17 against the United States, subject to the provisions of Chapter 171 of Title 28 of the United
18 States Code, for money damages for injury or loss of property or personal injury or death caused
19 by the negligent or wrongful act or omission of any employee of the United States while acting
20 within the scope of his or her office or employment under circumstances where the United States,
21 if a private person, would be liable to the claimant in accordance with the law of the place where
22 the act or omission occurred. However, any such claim shall not include a claim for any damages

1 caused, in whole or in part, by the act or omission of any person, including any contractor, who is
2 not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim
3 include a claim based on EPA's selection of response actions, or the oversight or approval of the
4 Settling Defendant's plans or activities. The foregoing applies only to claims which are brought
5 pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is
6 found in a statute other than CERCLA.

7 91. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a
8 claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R.
9 § 300.700(d).

10 92. Settling Defendant agrees not to assert any claims and to waive all claims or causes
11 of action that they may have for all matters relating to the Site, including for contribution, against
12 any person where the person's liability to Settling Defendant with respect to the Site is based
13 solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of
14 hazardous substances at the Site, or having accepted for transport for disposal or treatment of
15 hazardous substances at the Site if: the materials contributed by such person to the Site
16 containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of
17 waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

18 This waiver shall not apply to any claim or cause of action against any person meeting the above
19 criteria if EPA has determined that the materials contributed to the Site by such person
20 contributed or could contribute significantly to the costs of response at the Site. This waiver also
21 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant
22 may have against any person if such person asserts a claim or cause of action relating to the Site

1 against such Settling Defendant.

2 **XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION**

3 93. Except as provided in Paragraph 92 (Waiver of Claims Against De Micromis Parties,
4 nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of
5 action to, any person not a Party to this Consent Decree. The preceding sentence shall not be
6 construed to waive or nullify any rights that any person not a signatory to this decree may have
7 under applicable law. Except as provided in Paragraph 92 (Waiver of Claims Against De
8 Micromis Parties, each of the Parties expressly reserves any and all rights (including, but not
9 limited to, any right to contribution), defenses, claims, demands, and causes of action which each
10 Party may have with respect to any matter, transaction, or occurrence relating in any way to the
11 Site against any person not a Party hereto.

12 94. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling
13 Defendant is entitled, as of the Effective Date, to protection from contribution actions or claims
14 as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this
15 Consent Decree. "Matters Addressed" shall mean the Settling Defendant's liability pursuant to
16 or in connection with Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, Section
17 7003 of RCRA, 42 U.S.C. § 6973 for all Past, Interim, and Future Response Costs as defined
18 herein for the Koppers (Newport) Site incurred by either the United States, Settling Defendant or
19 by any private party.

20 95. The Settling Defendant agrees that with respect to any suit or claim for contribution
21 brought by them for matters related to this Consent Decree they will notify the United States and
22 the State in writing no later than sixty (60) days prior to the initiation of such suit or claim.

1 96. The Settling Defendant also agrees that with respect to any suit or claim for contribution
2 brought against them for matters related to this Consent Decree they will notify in writing the
3 United States and the State within ten (10) days of service of the complaint on them. In addition,
4 Settling Defendant shall notify the United States and the State within ten (10) days of service or
5 receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order
6 from a court setting a case for trial.

7 97. In any subsequent administrative or judicial proceeding initiated by the United States or
8 the State for injunctive relief, recovery of response costs, or other appropriate relief relating to
9 the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based
10 upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting,
11 or other defenses based upon any contention that the claims raised by the United States or the
12 State in the subsequent proceeding were or should have been brought in the instant case;
13 provided, however, that nothing in this Paragraph affects the enforceability of the covenants not
14 to sue set forth in Section XXI (Covenants Not to Sue by Plaintiffs).

15 **XXIV. ACCESS TO INFORMATION**

16 98. Settling Defendant shall provide to EPA and the State, upon request, copies of all
17 documents and information within its possession or control or that of its contractors or agents
18 relating to activities at the Site or to the implementation of this Consent Decree, including, but
19 not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts,
20 reports, sample traffic routing, correspondence, or other documents or information related to the
21 Work. Settling Defendant shall also make available to EPA and the State, for purposes of

1 investigation, information gathering, or testimony, their employees, agents, or representatives
2 with knowledge of relevant facts concerning the performance of the Work.

3 99. a. Settling Defendant may assert business confidentiality claims covering part or all
4 of the documents or information submitted to Plaintiffs under this Consent Decree to the extent
5 permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or
6 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by EPA
7 will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of
8 confidentiality accompanies documents or information when they are submitted to EPA and the
9 State, or if EPA has notified Settling Defendant that the documents or information are not
10 confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given
11 access to such documents or information without further notice to Settling Defendant.

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

22 100. No claim of confidentiality shall be made with respect to any data, including, but not

1 limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or
2 engineering data, or any other documents or information evidencing conditions at or around the
3 Site.

4 **XXV. RETENTION OF RECORDS**

5 101. Until ten (10) years after the Settling Defendant's receipt of EPA's notification
6 pursuant to Paragraph 51.b of Section XIV (Certification of Completion of the Work), each
7 Settling Defendant shall preserve and retain all non-identical copies of records and documents
8 (including records or documents in electronic form) now in its possession or control or which
9 come into its possession or control that relate in any manner to its liability under CERCLA with
10 respect to the Site, provided, however, that Settling Defendant who are potentially liable as
11 owners or operators of the Site must retain, in addition, all documents and records that relate to
12 the liability of any other person under CERCLA with respect to the Site. Settling Defendant
13 must also retain, and instruct its contractors and agents to preserve, for the same period of time
14 specified above, all non-identical copies of the last draft or final version of any documents or
15 records (including documents or records in electronic form) now in its possession or control or
16 which come into its possession or control that relate in any manner to the performance of the
17 Work, provided, however, that Settling Defendant (and its contractors and agents) must retain, in
18 addition, copies of all data generated during the performance of the Work and not contained in
19 the aforementioned documents required to be retained. Each of the above record retention
20 requirements shall apply regardless of any corporate retention policy to the contrary.

21 102. At the conclusion of this document retention period, Settling Defendant shall notify the

1 United States and the State at least ninety (90) days prior to the destruction of any such records or
2 documents, and, upon request by the United States or the State, Settling Defendant shall deliver
3 any such records or documents to EPA or the State. If the United States has not responded to
4 Settling Defendant's notice prior to the time Settling Defendant intend to destroy the records or
5 documents, Settling Defendant shall deliver all such records and documents to EPA no earlier
6 than ten (10) days after providing an additional written notice that such records and documents
7 will be delivered, unless EPA provides otherwise after receiving such notice. The Settling
8 Defendant may assert that certain documents, records and other information are privileged under
9 the attorney-client privilege or any other privilege recognized by federal law. If the Settling
10 Defendant assert such a privilege, it shall provide the Plaintiffs with the following: (1) the title
11 of the document, record, or information; (2) the date of the document, record, or information; (3)
12 the name and title of the author of the document, record, or information; (4) the name and title of
13 each addressee and recipient; (5) a description of the subject of the document, record, or
14 information; and (6) the privilege asserted by Settling Defendant. However, no documents,
15 reports, or other information created or generated pursuant to the requirements of the Consent
16 Decree shall be withheld on the grounds that they are privileged.

17 103. Settling Defendant hereby certifies individually that, to the best of its knowledge and
18 belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise
19 disposed of any records, documents, or other information (other than identical copies) relating to
20 its potential liability regarding the Site since notification of potential liability by the United States
21 or the State or the filing of suit against it regarding the Site and that it has fully complied with
22 any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42

1 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

2 **XXVI. NOTICES AND SUBMISSIONS**

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

11 **As to the United States:**

12 Chief, Environmental Enforcement Section
13 Environment and Natural Resources Division
14 U.S. Department of Justice
15 P.O. Box 7611
16 Washington, D.C. 20044-7611
17 Re: DOJ # 90-11-3-08619

18 and

19
20 Patricia C. Miller
21 Senior Assistant Regional Counsel (3RC42)
22 United States Environmental Protection Agency
23 Region III
24 1650 Arch Street
25 Philadelphia, PA 19103

26 **As to EPA:**

27 Matthew T. Mellon
28 EPA Project Coordinator (3HS23)

1 United States Environmental Protection Agency
2 Region III
3 1650 Arch Street
4 Philadelphia, PA 19103

5 [As to the State:

6 [Name]
7 State Project Coordinator
8 [Address]]

9 As to the Settling Defendant:

10 [Name]
11 Settling Defendant's Project Coordinator
12 [Address]

13 **XXVII. EFFECTIVE DATE**

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

16 **XXVIII. RETENTION OF JURISDICTION**

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

XXIX. APPENDICES

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

“Appendix A” is the ROD for the Koppers Co., Inc. (Newport Plant) Superfund Site (September 30, 2005)

“Appendix B” is the Two-Page Certified Cost Summary including costs through June 25, 2005 (dated August 31, 2005) referred to in the definition of “Past Response Costs.”

XXX. COMMUNITY RELATIONS

108. Settling Defendant shall propose to EPA and the State its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Plan. Settling Defendant 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 Defendant 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

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

110. Except as otherwise provided in this Paragraph, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Defendant, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United States will provide the State

1 United States, Settling Defendant, and the Court. Prior to providing its approval to any
2 modification to the provisions of this Consent Decree, the United States will provide the State
3 with a reasonable opportunity to review and comment on the proposed modification.
4 Modifications to the Remedial Design Work Plan, Remedial Action Work Plan, and any other
5 plan approved by EPA under this Consent Decree that do not materially alter the requirements of
6 those documents may be made by written agreement between the EPA Project Coordinator, after
7 providing the State with a reasonable opportunity to review and comment on the proposed
8 modification, and the Settling Defendant. Modifications to the Work made pursuant to
9 Paragraph 14 (“Modification of the Work”) may be made by EPA. Nothing in this Decree shall
10 be deemed to alter the Court's power to enforce, supervise, or approve modifications to this
11 Consent Decree.

12 **XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

13 111. This Consent Decree shall be lodged with the Court for a period of not less than thirty
14 (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42
15 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or
16 withhold its consent if the comments regarding the Consent Decree disclose facts or
17 considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.
18 Settling Defendant consent to the entry of this Consent Decree without further notice.

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

XXXIII. SIGNATORIES/SERVICE

113. The undersigned representative of the 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.

114. The 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 Defendant in writing that it no longer supports entry of the Consent Decree.

115. The 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 Defendant hereby agrees 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 Defendant need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. RELATIONSHIP BETWEEN ADMINISTRATIVE SETTLEMENT

AGREEMENT AND CONSENT DECREE

116. The United States and the Settling Defendant have agreed that certain portions of the Work shall commence in accordance with Administrative Order on Consent, EPA Docket No. _____, ("Settlement Agreement") prior to the Effective Date. Upon the Effective

1 Date, and as set forth in Section III of the Settlement Agreement , the Settlement Agreement
2 shall terminate. It is agreed by the Parties, that upon termination of the Settlement Agreement
3 due to entry of this Consent Decree, performance of work commenced under the Settlement
4 Agreement shall continue under this Consent Decree in accordance with the EPA-approved
5 schedules and requirements developed under the Settlement Agreement . To the extent that
6 Settling Defendant has fulfilled obligations under the Settlement Agreement that are also
7 required by this Consent Decree, Settling Defendant shall also be deemed to have fulfilled such
8 obligations under this Consent Decree.

9
10 **XXXV. FINAL JUDGMENT**

11 117. This Consent Decree and its appendices constitute the final, complete, and exclusive
12 agreement and understanding among the parties with respect to the settlement embodied in the
13 Consent Decree. The parties acknowledge that there are no representations, agreements, or
14 understandings relating to the settlement other than those expressly contained in this Consent
15 Decree. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall
16 constitute a final judgment between and among the United States and the Settling Defendant.
17 The Court finds that there is no just reason for delay and therefore enters this judgment as a final
18 judgment under Fed. R. Civ. P. 54 and 58.

19 **SO ORDERED THIS ____ DAY OF _____, 2006**

20 _____
21 United States District Judge

1 ***THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United***
2 ***States v. Beazer East, Inc. relating to the Koppers (Newport) Superfund Site.***
3
4

5 **FOR THE UNITED STATES OF AMERICA**

6
7 _____
8 **NAME**

9 **Assistant Attorney General**
10 **Environment and Natural Resources Division**
11 **U.S. Department of Justice**
Washington, D.C. 20530

12
13 _____
14 **DONNA DUER**

15 **Trial Attorney**
16 **Environmental Enforcement Section**
17 **Environment and Natural Resources Division**
18 **U.S. Department of Justice**
Washington, D.C. 20530

19
20 _____
21 **PATRICIA A. HANNIGAN**

22 **Assistant United States Attorney**
23 **District of Delaware**
24 **U.S. Department of Justice**
25 **Chemical Bank Plaza**
26 **1201 Market Street, Suite 100**
Wilmington, Delaware 19899

1
2 **DONALD S. WELSH**
3 **Regional Administrator, Region III**
4 **U.S. Environmental Protection Agency**
5 **1650 Arch Street**
6 **Philadelphia, PA 19103**

7
8
9 **WILLIAM C. EARLY**
10 **Regional Counsel**
11 **U.S. Environmental Protection Agency, Region III**
12 **1650 Arch Street**
13 **Philadelphia, PA 19103**

14
15 **PATRICIA C. MILLER**
16 **Senior Assistant Regional Counsel**
17 **U.S. Environmental Protection Agency, Region III**
18 **1650 Arch Street**
19 **Philadelphia, PA 19103**
20

FOR THE STATE OF DELAWARE

2
3
4
5

[Name]
[Title]
[Address]

1 **FOR BEAZER EAST, INC.**

2
3 _____
4 _____
5 *[Signature]*

6 *Please Type the Following:*

7 Name: _____

8 Title: _____

9 Address: _____

10 **Agent Authorized to Accept Service on Behalf of Above-Signed Party:**

11 *Please Type the Following:*

12 Name: _____

13 Title: _____

14 Address: _____

15 Telephone: _____
16
17

Koppers SW early RD

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

IN THE MATTER OF:

Beazer East, Inc.

Respondent

Proceeding Under Sections 104, 106
and 122(a) of the Comprehensive
Environmental Response, Compensa-
tion, and Liability Act of
1980, as amended, 42 U.S.C.
§§ 9604, 9606 and 9622(a).

:
:
:
:
: EPA Docket No.
:
:
:
:
:
:
:

**ADMINISTRATIVE ORDER ON CONSENT FOR
REMEDIAL DESIGN**

The Parties to this Administrative Settlement Agreement and Order on Consent ("Settlement Agreement"), Beazer East, Inc. ("Respondent"), the United States Environmental Protection Agency ("EPA"), and the State of Delaware ("State") have agreed to the entry of this Settlement Agreement, and the Respondent agrees to undertake all actions required by this Consent Order pursuant to the terms and conditions of this Settlement Agreement, including any attachments hereto.

I. GENERAL PROVISIONS

- 1.1 This Settlement Agreement is issued pursuant to the authority vested in the President of the United States by Sections 104, 106 and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9606 and 9622(a); delegated to the Administrator of EPA by Executive Order No. 12580 (52 Fed. Reg. 2926 (January 29, 1987)); and further delegated to the Regional Administrators of EPA by EPA Delegation Nos. 14-14-A and 14-14-C.
- 1.2 The Respondent consents to and will not contest EPA jurisdiction to issue and/or enforce this Settlement Agreement.
- 1.3 On September 30, 2005, EPA issued a Record of Decision ("ROD") selecting remedial action for implementation at the Koppers (Newport) Superfund Site in Newport, New Castle County, Delaware ("Site"). All findings, conclusions and determinations supporting the legal requirements for issuance of this Settlement Agreement under Section 106 of CERCLA, 42 U.S.C. § 9606, are set forth in the ROD. Issuance of this

Settlement Agreement is practicable and in the public interest within the meaning of Section 122(a) of CERCLA, 42 U.S.C. § 9622(a).

- 1.4 The actions required by this Settlement Agreement are necessary to protect the public health and welfare and the environment.
- 1.5 All activities undertaken by Respondent pursuant to this Settlement Agreement shall be performed in accordance with the requirements of all applicable Federal and State laws and regulations. Respondent must also comply with all applicable or relevant and appropriate requirements of all Federal and State environmental laws as set forth in the ROD. EPA has determined that activities conducted pursuant to this Settlement Agreement and approved by EPA shall be considered to be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300.
- 1.6 Respondent is jointly and severally responsible for carrying out all actions required by this Settlement Agreement.

II. STATEMENT OF PURPOSE

- 2.1 In entering into this Settlement Agreement, the common objective of EPA and the State and the Respondent is to expedite commencement and performance of Remedial Design, as defined in Paragraph 4, Section IV (Definitions) of the proposed consent decree appended hereto as Attachment 1 ("Consent Decree"), in accordance with the requirements of this Settlement Agreement and the Consent Decree and to enter into an agreement that is legally binding upon all Parties until the Consent Decree is effective pursuant to Paragraph 105, Section XXVII (Effective Date) of the Consent Decree.
- 2.2 In an effort to simplify this Settlement Agreement, the Parties have agreed that certain obligations of this Settlement Agreement shall be expressed by reference to provisions of the Consent Decree. Each referenced provision of the Consent Decree, including each provision of the Consent Decree referenced therein, shall be incorporated herein by reference and shall be effective as if set forth in this Settlement Agreement in its entirety. For those provisions, and solely for purposes of this Settlement Agreement, the following definitions apply except as otherwise provided in this Settlement Agreement:
 - (a) The term "Settling Defendant" when used in the Consent Decree shall mean Respondent;
 - (b) The term "Consent Decree" when used in the Consent Decree shall mean this Settlement Agreement;
 - (c) The term "Parties" when used in the Consent Decree shall mean Respondent and EPA and the State;
 - (d) All references to the date of lodging or entry of the Consent Decree shall mean the effective date of this Settlement Agreement;
 - (e) All references to Section XIX (Dispute Resolution) of the Consent Decree shall mean Section XV (Dispute Resolution) of this Settlement Agreement.
 - (f) The term "Work" when used in this Settlement Agreement shall mean the

activities Respondent is required to perform under this Settlement Agreement.

- 2.3 Except as provided herein, all terms shall be defined in the manner set forth in Paragraph 4, Section IV (Definitions) of the Consent Decree.

III. EFFECTIVE DATE AND TERMINATION

- 3.1 The effective date of this Settlement Agreement shall be the third business day following the date on which EPA forwards a fully executed true and correct copy of this Settlement Agreement to Respondent's counsel via overnight delivery.
- 3.2 This Settlement Agreement shall terminate:
- (a) at the time the Consent Decree becomes effective pursuant to Section XXVII of the Consent Decree;
 - (b) at the time the Court denies the United States' petition to enter the Consent Decree; or
 - (c) at the time the United States withdraws or withholds its consent from the Consent Decree because comments submitted during the public comment period established pursuant to Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2) and 28 C.F.R. § 50.7, disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate; whichever is earlier.
- 3.3 Should this Settlement Agreement be terminated under Section 3.2(b) or (c) above, such termination shall not affect Section VIII (Access), Section XV (Dispute Resolution), Section XIX (Retention of Records) and Section XVII (Covenants by Respondent) of this Settlement Agreement. Termination of this Settlement Agreement under 3.2(a) above shall not affect Sections XXII (Covenants Not to Sue By EPA and the State) or XXIV (Contribution Protection) of this Settlement Agreement.

IV. PARTIES BOUND

- 4.1 This Settlement Agreement shall apply to and be binding upon EPA, the State and upon Respondent and its successors and assigns. Any change in ownership or corporate status of a Respondent, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Settlement Agreement.
- 4.2 Paragraph 3, Section III (Parties Bound) of the Consent Decree is incorporated herein by reference.

V. NOTICE TO THE STATE

- 5.1 The State is a party to this Settlement Agreement and has notice of this Settlement Agreement as required by Section 106 of CERCLA, 42 U.S.C. § 9606(a).

VI. WORK TO BE PERFORMED

- 6.1 The following Consent Decree provisions are incorporated herein by reference:
- (a) Paragraph 8, Section V (General Provisions);
 - (b) Paragraph 10, Section VI (Performance of the Work by Settling Defendant);
 - (c) Paragraph 11 a., b. and c., Section VI (Performance of the Work by Settling Defendant);
 - (d) Paragraph 14, Section VI (Performance of the Work by Settling Defendant), except that modifications under such paragraph can only be required for remedial design activities;
 - (e) Paragraph 15, Section VI (Performance of the Work by Settling Defendant); and
 - (f) Paragraph 87, Section XXI (Covenants Not to Sue by Plaintiffs)

VII. QUALITY ASSURANCE

- 7.1 Section VIII (Quality Assurance, Sampling and Data Analysis) of the Consent Decree is incorporated herein by reference.

VIII. ACCESS

- 8.1 The following Consent Decree provisions are incorporated herein by reference:
- (a) Paragraph 26 a and b, Section IX (Access and Institutional Controls);
 - (b) Paragraph 27 a, Section IX (Access and Institutional Controls);
 - (c) Paragraph 28, Section IX (Access and Institutional Controls), but only to the extent such Paragraph pertains to access agreements.
 - (d) Paragraph 30, Section IX (Access and Institutional Controls).

X. REPORTING REQUIREMENTS

- 9.1 Section X (Reporting Requirements) of the Consent Decree is incorporated herein by reference.

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

- 10.1 Section XI (EPA Approval of Plans and other Submissions) of the Consent Decree is incorporated herein by reference.

XI. PROJECT COORDINATORS

- 11.1 Section XII (Project Coordinators) of the Consent Decree is incorporated herein by reference.

XII. EMERGENCY RESPONSE

- 12.1 Section XV (Emergency Response) of the Consent Decree is incorporated herein by reference.

XIII. INDEMNIFICATION

- 13.1 Paragraphs 58 and 59, Section XVII (Indemnification and Insurance) of the Consent Decree are incorporated herein by reference.

XIV. FORCE MAJEURE

- 14.1 Section XVIII (Force Majeure) of the Consent Decree is incorporated herein by reference.

XV. DISPUTE RESOLUTION

- 15.1 For purposes of this Section XV (Dispute Resolution), the term "United States" as used in Section XIX (Dispute Resolution) of the Consent Decree shall mean EPA.

- 15.2 The following Consent Decree provisions are incorporated herein by reference:

- (a) Paragraph 65, Section XIX (Dispute Resolution)
- (b) Paragraph 66, Section XIX (Dispute Resolution)
- (c) Paragraph 67.a. and b., Section XIX (Dispute Resolution)
- (d) Paragraph 67.c., Section XIX (Dispute Resolution) (first sentence only)
- (e) Paragraph 68, Section XIX (Dispute Resolution)
- (f) Paragraph 68.a., Section XIX (Dispute Resolution)
- (g) Paragraph 68.b., Section XIX (Dispute Resolution) (first sentence only)

- (h) Paragraph 68.d., Section XIX (Dispute Resolution) (first sentence only)
- (i) Paragraph 69, Section XIX (Dispute Resolution)
- (j) Paragraph 69.a., Section XIX (Dispute Resolution) (first sentence only). EPA's decision shall be binding on Respondent. Respondent shall bear the burden of coming forward with evidence and the burden of persuasion.
- (k) Paragraph 70, Section XIX (Dispute Resolution), except that
 - (i) the phrase "as provided in Paragraph 79" in the second sentence, and
 - (ii) the last sentence in the Paragraph shall be omitted. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVI (Stipulated Penalties) of this Settlement Agreement.

XVI. STIPULATED PENALTIES

- 16.1 Paragraphs 71-78 and 80-81, Section XX (Stipulated Penalties) of the Consent Decree are incorporated herein by reference, except that the situation referred to in subsection (3) of Paragraph 75 shall not apply under this Settlement Agreement.
- 16.2 Stipulated penalties shall continue to accrue during any dispute resolution period. In the event Respondent does not prevail upon resolution of a dispute, Respondent shall pay all stipulated penalties owed within thirty (30) days of receipt of EPA's decision regarding the dispute. These penalties shall include all penalties which accrued prior to and during the period of dispute. Stipulated penalties shall not be owed or collectible for the matter, or that portion of the matter, in dispute to the extent Respondent prevails.

XVII. COVENANTS BY RESPONDENT

- 17.1 Section XXII (Covenants by Settling Defendant) of the Consent Decree is incorporated herein by reference.

XVIII. ACCESS TO INFORMATION

- 18.1 Section XXIV (Access to Information) of the Consent Decree is incorporated herein by reference.

XIX. RETENTION OF RECORDS

- 19.1 Section XXV (Retention of Records) of the Consent Decree is incorporated herein by reference.

XX. NOTICES AND SUBMISSIONS

- 20.1 Section XXVI (Notices and Submissions) of the Consent Decree is incorporated herein by reference.

XXI. COMMUNITY RELATIONS

- 21.1 Section XXX (Community Relations) of the Consent Decree is incorporated herein by reference.

XXII. MODIFICATION

- 22.1 Paragraph 109, Section XXXI of the Consent Decree is incorporated herein by reference.
- 22.2 No modifications shall be made to the provisions of this Settlement Agreement without written notification to, and approval of, the Parties.
- 22.3 Modifications to the Remedial Design Work Plan may be made by mutual agreement of the EPA and Respondent's Project Coordinators. Any such modifications must be in writing and signed first by the Respondent's Project Coordinator and then by the EPA Project Coordinator. The effective date of the modification shall be the date on which the modification is signed by the EPA Project Coordinator.

XXIII. COVENANT NOT TO SUE BY EPA AND THE STATE

- 23.1 In consideration of the actions the Respondent will perform under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA and the State covenant not to sue or take administrative actions against Respondents pursuant to sections 106 of CERCLA, 42 U.S.C. § 9606, and State law for the Work. This covenant not sue shall take effect upon the effective date of this Settlement Agreement and is conditioned upon Respondent's complete and satisfactory performance of all obligations under this Settlement Agreement. This covenant not to sue extends only to Respondent and does not extend to any other persons.
- 23.2 Nothing in this Settlement Agreement shall be construed to limit the rights the United States and the State have reserved in the Consent Decree.

XXIV. RESERVATION OF RIGHTS

- 24.1 The covenants not to sue set forth in Paragraph 23.1 do not pertain to any matters other than those expressly specified in Paragraph 23.1. EPA and the State reserve, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all matters not expressly included within the covenant not to sue. Notwithstanding any other provision of this Settlement Agreement, EPA and the State reserve all rights against Respondent with respect to:

- (a) claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- (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 Respondent's ownership or operation of the Site, or upon the Respondent's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Settlement Agreement by the Respondent;
- (d) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- (e) criminal liability;
- (f) liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and
- (g) liability for performance of response action other than the Work.

XXV. CONTRIBUTION

- 25.1 The parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2), and that the Respondent is entitled, as of the effective date of this Settlement Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for the "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement is the Work.
- 25.2 The parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which the Respondent has resolved its liability to the United States for the Work.
- 25.3 Nothing in this Settlement Agreement shall be construed to grant any rights to persons not a party to this Settlement Agreement. Nothing in this Settlement Agreement precludes the United States or the State or Respondent from asserting any claims, causes of action, or demands against any person not a party to this Settlement Agreement for indemnification, contribution, or cost recovery. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

IT IS SO AGREED AND ORDERED.

Donald S. Welsh
Regional Administrator
EPA Region III

Date

FOR THE RESPONDENT:

The undersigned hereby certifies that (he/she) is authorized to execute this Settlement Agreement on behalf of the Respondent for which (he/she) has signed and to bind said Respondent to the terms and conditions of this Settlement Agreement.

(Respondent)
(Name)
(Title)

Date

Certified By Financial Management Office

Narrative Cost Summary

KOPPERS, NEWPORT, DE SITE ID = 03 3C

ALL PAST COSTS THROUGH JUNE 25, 2005

COST PACKAGE #101180, #112702, #114922, #117003 & #118262

1. The United States Environmental Protection Agency has incurred at least \$152,674.81 for Regional Payroll Costs.
2. The United States Environmental Protection Agency has incurred at least \$7,919.48 for Headquarters Payroll Costs.
3. The United States Environmental Protection Agency has incurred at least \$3,975.28 for Regional Travel Costs.
4. The United States Environmental Protection Agency has incurred at least \$505.38 for Headquarters Travel Costs.
5. The United States Environmental Protection Agency has incurred costs of at least \$32,970.37 for ALLOCATION TRANSFER IAG'S contract expenditures. The total represents the amount spent under the DEPARTMENT OF HEALTH & HUMAN SERVICES contract.
6. The United States Environmental Protection Agency has incurred costs of at least \$63.16 for COMMUNITY INVOLVEMENT SUPPORT SERVICES (CISS) contract expenditures. The total represents the amount spent under the UNIVERSE TECHNOLOGIES contract.
7. The United States Environmental Protection Agency has incurred costs of at least \$176.81 for EMERGENCY REMOVAL CLEANUP SERVICES (ERCS) CONTRACT contract expenditures. The total represents the amount spent under the ENVIRONMENTAL TECHNOLOGY OF NORTH AMERICA contract.
8. The United States Environmental Protection Agency has incurred costs of at least \$8,646.93 for ENFORCEMENT SUPPORT AND COMMUNITY INVOLVEMENT SUPPORT SERVICES CONTRACT contract expenditures. The total represents the amount spent under the CHENEGA TECHNICAL PRODUCTS, LLC contract.
9. The United States Environmental Protection Agency has incurred costs of at least \$2,048.44 for ENFORCEMENT SUPPORT SERVICES contract expenditures. The total represents the amount spent under the BOOZ, ALLEN & HAMILTON, INC. contract.
10. The United States Environmental Protection Agency has incurred costs of at least \$21,856.49 for INTERAGENCY AGREEMENT (IAG) COSTS contract expenditures. The total represents the amount spent under the ARMY CORPS OF ENGINEERS contract.
11. The United States Environmental Protection Agency has incurred costs of at least \$4,041.00 for OTHER FEDERAL AGENCIES APPROPRIATIONS contract expenditures. The total represents the amount spent under the DEPARTMENT OF HEALTH & HUMAN SERVICES contract.
12. The United States Environmental Protection Agency has incurred costs of at least \$11,373.00 for STATE COOPERATIVE AGREEMENT (SCA) COSTS contract expenditures. The total represents the amount spent under the STATE OF DELAWARE contract.

Certified By Financial Management Office

Narrative Cost Summary

KOPPERS, NEWPORT, DE SITE ID = 03 3C

ALL PAST COSTS THROUGH JUNE 25, 2005

COST PACKAGE #101180, #112702, #114922, #117003 & #118262

- 13. The United States Environmental Protection Agency has incurred costs of at least \$-4,424.84 for TECHNICAL ASSISTANCE TEAM (TAT) CONTRACT COSTS contract expenditures. The total represents the amount spent under the ROY F. WESTON, INC. contract.
- 14. The United States Environmental Protection Agency has incurred costs of at least \$69.25 for Contract Lab Program (CLP) contract expenditures.
- 15. The United States Environmental Protection Agency has incurred costs of at least \$5,960.41 for Miscellaneous Expenses.
- 16. The United States Environmental Protection Agency has incurred at least \$123,167.98 for Indirect Costs.

Total Site Costs:

\$371,023.95