

Butterworth Landfill #2

E.S.
4/2/99

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

 UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THE CITY OF GRAND RAPIDS,)
 MICHIGAN, et al.,)
)
 Defendants.)

CIVIL ACTION NO.

CONSENT DECREE

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| _____ |) | |

CONSENT DECREE FOR CONDUCTING REMEDIAL ACTION

I. BACKGROUND

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

A. The United States in its complaint seeks, *inter alia*, the performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

B. 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 Michigan (the "State") on December 12, 1997 of negotiations with potentially responsible parties regarding the implementation of the remedial

action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

C. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Federal Natural Resource Trustee prior to negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

D. The Defendants that have entered into this Consent Decree do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

E. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on December 30, 1982.

F. In response to a release or a substantial threat of a release of hazardous substances at and from the Site, on June 27, 1986 EPA entered into a Consent Decree with five PRPs, the City of Grand Rapids, General Motors Corporation, Michigan Waste Systems, Wickes Manufacturing Company and Organic Chemicals Inc., to conduct a Remedial Investigation and Feasibility Study ("RI/FS") pursuant to 40 C.F.R. § 300.430. The RI/FS was completed in December 1991.

G. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action in May 1992. in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

H. In 1988 the surface soil/test pit assay conducted during the Remedial Investigation ("RI") identified the existence of polychlorinated biphenyls ("PCBs") at levels of 800 mg/kg and chromium at levels of 43,000 mg/kg at one location at the Site. Consequently, on October 26, 1989, EPA entered into an Administrative Order by Consent with Michigan Waste Systems, the City of Grand Rapids, General Motors Corporation, Wickes Manufacturing Company and Consumers Power Company to remove approximately 1100 tons of PCB contaminated soils and material. The PCB contaminated soils were disposed of off-site in accordance with applicable state and federal laws. The removal action was completed in June 1990.

I. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed in September, 1992, which the State had a reasonable opportunity to review and comment. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617.

J. Pursuant to an Administrative Order on Consent dated February 1993, the same five PRPs who conducted the removal action also drafted the Remedial Design for the implementation of the ROD remedy.

K. These same five PRPs also stockpiled cover material on the Site to be used in constructing the cap required by the ROD.

L. On October 23, 1998, EPA issued an Explanation of Significant Differences ("ESD") to the ROD amending the Remedial Action ("RA") by incorporating State mixing zone-based groundwater-surface water interface ("GSI") criteria as Alternate Concentrate Limits ("ACLs") for groundwater and providing for the construction of a soil cap in the Radio Tower and Station Building Area ("RTSBA"). An amendment to the ESD was issued on December 23, 1998. Notice of the ESD has been published in local newspapers and has been made a part of the administrative record.

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

N. Solely for the purposes of Section 113(j) of CERCLA, the RA selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

O. EPA issued Special Notice letters to 81 PRPs on January 20, 1998 and April 16, 1998 requesting them to perform the RA.

P. As a result of extended negotiations, EPA has agreed to "carve out" a portion of the Remedial Action amounting to a minimum of \$2 million of activities that would otherwise be part of the Work required to be undertaken by the Settling Work Defendants.

Q. EPA presently intends that the carve out activities will be performed by those

parties who received Special Notice Letters from EPA and are not participating in this Consent Decree and that those parties may also be required to reimburse EPA for Future Response Costs.

R. The participating parties to the 1986 Consent Decree for the RI/FS and the 1990 AOC for the Design, have paid past response costs incurred by the United States through December 1995.

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

II. JURISDICTION

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

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate

status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Work Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Work Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Work Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Work Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

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

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

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

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

"ESD" shall mean the Explanation of Significant Differences approved by and issued by EPA on October 23, 1998, and as amended on December 23, 1998, allowing the implementation in the Remedial Action of the State mixing zone-based GSI criteria as the ACLs for groundwater and the construction of a soil cap over the 33-acre portion of the Site known as the Radio Tower and Station Building Area (RTSB). The ESD is attached as Appendix C.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX

(including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 85 of Section XXI.

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

"Matters Addressed" in this settlement are all response actions taken or to be taken and all response costs incurred or to be incurred by the United States or any other person with respect to the Site. The "matters addressed" in this settlement do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

"MDEQ" shall mean the Michigan Department of Environmental Quality and any successor departments or agencies of the State.

"Municipal Sewage Sludge" shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

"Municipal Solid Waste" shall mean household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of

such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g. yard waste, food waste, glass, and aluminum) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

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

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

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

"Parties" shall mean the United States and the Settling Defendants.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the "Selected Remedy" Section of the ROD and Section II of the SOW.

"Plaintiff" shall mean the United States.

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Butterworth Landfill Site signed in September of 1992, by the Regional Administrator, EPA Region 5, or his/her delegate, as modified by the October 23, 1998 ESD (as amended on December 23, 1998), and all attachments thereto. The ROD is attached as Appendices A and C.

"Remedial Action" or "RA" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the ROD, the SOW, and the final Remedial Design and Remedial Action Workplan and other plans approved by EPA.

"Remedial Action Workplan" or "RA Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean, the Amended Remedial Design Project Plan ("ARDPP") and any modifications made to the ARDPP in accordance with the ESD and this Consent Decree.

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

"Settling Cash Defendants" shall mean those potentially responsible parties listed on Appendix E.1.

"Settling Defendants" shall mean Settling Work Defendants, Settling Owner Defendants and Settling Cash Defendants.

"Settling Owner Defendants" shall mean those Settling Defendants listed in Appendix E.2.

"Settling Work Defendants" shall mean those Settling Defendants listed in Appendix E.3.

"Site" shall mean the Butterworth #2 Landfill Superfund Site, encompassing approximately 180 acres, and its approximate boundaries are the Grand River on the south, Interstate 196 on the west, Butterworth Street on the north and a Consumers Power substation on the east, in Grand Rapids, Michigan and depicted generally on the map attached as Appendix D.

"State" shall mean the State of Michigan.

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

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

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

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous substance" under Part 201, Section 101(1)(t) of Michigan Act 451, MCL § 324.20101(1)(t).

"Work" shall mean all activities Settling Work Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records) and those portions of the construction and O&M of the RA that EPA determines shall be performed by non-settling PRPs in accordance with Paragraph 12.c. However, as set forth in Paragraph 6(c),

in the event this portion of the RA is not performed by the non-settling PRPs, EPA reserves the right to require Settling Work Defendants to complete it. Should EPA require Settling Work Defendants to perform this portion of the RA, Settling Work Defendants shall complete it as Work they are required to perform under the Consent Decree.

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health, welfare and the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendants and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants

a. Settling Cash Defendants shall make payments to Settling Work Defendants in accordance with Section XVI of this Consent Decree in contribution toward Settling Work Defendants' performance of the Work, and are subject to those provisions and requirements that reference Settling Cash Defendants, including Section XXV (Retention of Records); Subparagraph 71.e of Section XX(Stipulated Penalties); Subparagraph 54.a of Section XVI (Payment of Response Costs); and Section XXI (Covenant Not to Sue by Plaintiff).

b. Settling Work Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, the Remedial Design and all work plans and the standards, specifications, and schedules set forth therein or developed by Settling Work Defendants and approved by EPA pursuant to this Consent Decree.

c. Settling Work Defendants will not be required to perform that portion of the RA designated by the United States pursuant to Paragraph 12.c. unless non-settling PRPs fail to perform the designated portion of the RA. In that event, EPA reserves the right to require Settling Work Defendants to complete all such requirements. This provision shall not be subject to Section XIX, "Dispute Resolution."

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

7. Compliance With Applicable Law

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

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site

requires a federal or state permit or approval, Settling Work Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

9. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by Settling Owner Defendants that is located within the Site, within 30 days after the entry of this Consent Decree, the Settling Owner Defendant shall submit to EPA for review and approval a notice to be filed with the Kent County Register of Deeds, State of Michigan, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site in September 1992, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Owner Defendant shall record the notice within 30 days of EPA's approval of the notice. The Settling Owner Defendant shall provide EPA with a certified copy of the recorded notice within 30 days of recording such notice.

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Owner Defendant conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Settling Owner Defendant conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

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

VI. PERFORMANCE OF THE WORK BY SETTLING WORK DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Work Defendants pursuant to Sections VI (Performance of the Work by Settling Work Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 30 days after the lodging of this Consent Decree, Settling Work Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Work Defendants propose to change a Supervising Contractor, Settling Work Defendants shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Work Defendants in writing. Settling Work Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Work Defendants may select any

contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

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

11. Remedial Design.

The Remedial Design for the remedy set forth in the ROD was completed pursuant to the Remedial Design AOC and was approved by the EPA on February 3, 1998. In accordance with the SOW, Settling Work Defendants are required to submit a draft ARDPP for approval by EPA within 10 days of the lodging of the decree. Within 20 days of the receipt of EPA's comments on the draft ARDPP, Settling Work Defendants shall issue a final ARDPP. The ARDPP is incorporated into and is an enforceable part of this Consent Decree.

12. Remedial Action

a. Within 45 days of the date of lodging of this Consent Decree, Settling Work Defendants shall submit to EPA a draft work plan for the performance of the Remedial Action at the Site. The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, the ARDPP, and the design plans and specifications approved by EPA. Upon its approval by EPA, the RA Work Plan

shall be incorporated into and become enforceable under this Consent Decree. Within 20 days of receipt of EPA comments on the draft RA Work Plan, Settling Work Defendants shall submit to EPA a final RA Work Plan.

b. The Remedial Action Work Plan shall include the following:

(1) a description of the strategy for completing the construction activities, (2) a bar chart schedule for completing the construction activities, (3) a description of the strategy for implementing the operation, maintenance, and monitoring activities, (4) a schedule for implementing the operation, maintenance, and monitoring activities, (5) the schedule for deliverables and other project milestones, as contained in Section V of the SOW, (6) identification of any substantive permit requirements needed to implement the remedial action and the schedule for addressing these requirements, (7) preliminary identification of the RA project team, (8) delineation of the area around the landfill in which water supply well installation will be prohibited and (9) an ACL performance monitoring plan including, at a minimum, (10) installation and sampling and analysis procedures for all new groundwater/surface water interface (GSI) wells, including the 17 ACL well locations and the two to five additional GSI wells south of the RTSB area, (11) installation and sampling and analysis procedures for three leachate monitoring wells in the RTSB area, (12) a list of the mixing zone based GSI criteria (i.e. the ACLs) that have been established for the Butterworth Site by the State of Michigan, (13) a data evaluation plan to assess compliance with the ACLs and to evaluate the adequacy of the soil cover over the RTSB area, (14) an operation and maintenance plan for the groundwater and leachate monitoring wells, (15) a contingency

response plan, as described above, to address exceedances of the ACLs, and (16) a corrective action plan to mitigate exceedances of the ACLs.

c. Upon approval of the Remedial Action Work Plan by EPA and after an opportunity for EPA to consult with the State, Settling Work Defendants shall implement the activities required under the Remedial Action Work Plan except for the following portion of Work to be undertaken by non-settling PRPs, which includes: the excavation, loading and transport of rooting zone material required for the construction of the east side portion of the cap to be performed in the year 2000 and O&M consisting of clay cover repair, rooting zone and topsoil repair, mowing, reseeding, fertilizing, fence maintenance, erosion and sediment control, landfill gas monitoring, and remedial action reporting to commence within one year of the completion of construction of the cap and continue through the year 2029. The Settling Work Defendants shall submit to EPA all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Work Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

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

13. Modification of the Remedial Design or Related Work Plans.

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

b. For the purposes of this Paragraph 13 and Paragraphs 49,50, and 51 only, the "scope of the remedy selected in the ROD" is: to prohibit the installation of water supply wells within an area around the site to be defined at a later date in consultation with EPA and the State of Michigan; to establish alternative concentration limits; to construct a new landfill cover, including a clay capping layer, freeze-thaw layer, topsoil layer, revegetation, slope requirement and flood protection; to remove and dispose of drums either concurrently exposed or uncovered during activities conducted as part of the Remedial Action.

c. If Settling Work Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 67 (record review). The ARDPP and/or related work plans shall be modified in accordance with final resolution of the dispute.

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

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

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

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

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

receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

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

VII. REMEDY REVIEW

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

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

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

19. Settling Work Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Work Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 81 or Paragraph 82 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Work Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 81 or Paragraph 82 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 67 (record review).

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

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

21. Settling Work Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect Project Plans," (EPA /600/9-88/087), and

subsequent amendments to such guidelines upon notification by EPA to Settling Work Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Work Defendants shall submit to EPA for approval, after consultation with the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Work Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Work Defendants in implementing this Consent Decree. In addition, Settling Work Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Work Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Work Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Work Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis

pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, the Settling Work Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Work Defendants shall notify EPA not less than 14 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Work Defendants to take split or duplicate samples of any samples EPA takes as part of its oversight of the Settling Work Defendants' implementation of the Work.

23. Settling Work Defendants shall submit to EPA 3 copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Work Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

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

IX. ACCESS AND INSTITUTIONAL CONTROLS

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

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

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Implementing the Work pursuant to the conditions set forth in this Consent Decree;
- vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Work Defendants or their agents, consistent with Section XXIV (Access to Information);
- viii. Assessing Settling Work Defendants' compliance with this Consent Decree; and

- ix. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;
- b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to, no consumptive or other use of the groundwater underlying the property and no installation, construction, removal or use of any buildings, wells, pipes, roads ditches or any other structures at the property except as approved by EPA in accordance with the Consent Decree and the ROD; and
- c. execute and record in the Register of Deeds Office for Kent County, Michigan, an easement, running with the land, that (1) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a of this Consent Decree, and (2) grants the right to enforce the land/water use restrictions listed in Paragraph 25.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to (1) the United States, on behalf of EPA, and its representatives, (2) the State and its representatives, (3) the other Settling Defendants and their representatives, and/or (4) other

appropriate grantees identified by EPA. Such Settling Defendants shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

- i. a draft easement that is enforceable under the laws of the State of Michigan, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. Section 255; and
- ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Register of Deeds Office for Kent County, Michigan. Within 30 days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

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

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

b. an agreement, enforceable by the Settling Work Defendants and the United States, to abide by the obligations and restrictions established by Paragraph 25(b) of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. the execution and recordation in the Register of Deeds Office for Kent County, Michigan, of an easement, running with the land, that (1) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a of this Consent Decree, and (2) grants the right to enforce the land/water use restrictions listed in Paragraph 25.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (1) the United States, on behalf of EPA, and its representatives, (2) the State and its representatives, (3) the Settling Work Defendants and their representatives, and/or (4) other appropriate grantees identified by EPA. If EPA so requests, within 45 days after notice of such a

request, Settling Work Defendants shall submit to EPA for review and approval with respect to such property:

- i. a draft easement that is enforceable under the laws of the State of Michigan, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. Section 255; and
- ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, Settling Work Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Register of Deeds Office for Kent County, Michigan. Within 30 days of the recording of the easement, Settling Work Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

27. If any access or land/water use restriction agreements required by Paragraphs 26.a or 26.b of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 26.c of this Consent Decree are not submitted to EPA in draft form within 45 days of a request by EPA, Settling Work Defendants shall promptly notify the United States in writing, and

shall include in that notification a summary of the steps that Settling Work Defendants have taken to attempt to comply with Paragraph 26 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Work Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land.

28. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, as modified by the ESD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's and the State's efforts to secure such governmental controls.

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

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Work Defendants shall submit to EPA 3 copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Work Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree

completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Work Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Settling Work Defendants shall submit these progress reports to EPA by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Work Defendants pursuant to Paragraph 49.c of Section XIV (Certification of Completion). If requested by EPA, Settling Work Defendants shall also provide briefings for EPA to discuss the progress of the Work.

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

32. Upon the occurrence of any event during performance of the Work that Settling Work Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Work

Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 5, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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

34. Settling Work Defendants shall submit 3 copies of all plans, reports, and data required by the ARDPP or any other approved plans to EPA in accordance with the Remedial Action Workplan. Settling Work Defendants shall simultaneously submit 3 copies of all such plans, reports and data to the State.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after consultation with the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Work Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Work Defendants at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

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

38. a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Work Defendants shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX (Stipulated Penalties), shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 36 and 37.

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

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

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Work Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Work Defendants invoke the

dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX (Stipulated Penalties).

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

XII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, Settling Work Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Work Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Work Defendants' Project Coordinator shall not be an attorney for any of the Settling Work Defendants

in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

43. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

44. EPA's Project Coordinator and the Settling Work Defendants' Project Coordinator will meet, at a minimum, on a quarterly basis, unless a different frequency is mutually agreed to.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of entry of this Consent Decree, Settling Work Defendants shall establish and maintain financial security in the amount of \$15,230,000 in one or more of the following forms:

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

- (b) One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- (c) A trust fund;
- (d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Work Defendants;
- (e) A demonstration that one or more of the Settling Work Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

46. If the Settling Work Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(d) of this Consent Decree, Settling Work Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Work Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45(d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after consultation with the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Work Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for

approval one of the other forms of financial assurance listed in Paragraph 45 of this Consent Decree. Settling Work Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

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

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

XIV. CERTIFICATION OF COMPLETION

49. Completion of Construction.

a. Within 15 days after Settling Work Defendants conclude construction of the Remedial Action as set forth in the SOW, Settling Work Defendants shall schedule and

conduct a pre-final, pre-certification inspection to be attended by Settling Work Defendants and EPA. Within 15 days after completion of the pre-final, pre-certification inspection, the Settling Work Defendants shall submit a written report of the inspection, including a schedule for completing any items identified during the pre-final, pre-certification inspection. Within 15 days after completion of the work items identified in the pre-final, pre-certification inspection report, the Settling Work Defendants shall schedule and conduct a final pre-certification inspection to be attended by Settling Work Defendants and EPA. Within 15 days after completion of the final pre-certification inspection, the Settling Work Defendants shall submit a written report of the inspection, including a schedule for completing any items identified during the final pre-certification inspection. If, after the final pre-certification inspection, the Settling Work Defendants still believe that construction has been fully performed, they shall submit a written Completion of Construction report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 60 days of the final inspection. In the report, a registered professional engineer and the Settling Work Defendants' Project Coordinator shall state that construction has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer, and, as needed, an addendum to the O & M Plan. The report shall contain the following statement, signed by a responsible corporate official of a Settling Work Defendant or the Settling Work Defendants' Project Coordinator:

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

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

b. If, after receipt and review of the written Completion of Construction Report, EPA, after consultation with the State, determines that construction or any portion thereof has not been completed in accordance with this Consent Decree, EPA will notify Settling Work Defendants in writing of the activities that must be undertaken by Settling Work Defendants pursuant to this Consent Decree to complete construction. Provided, however, that EPA may only require Settling Work Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD" as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Work Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Work Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

c. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of Construction and after consultation with the State, that Construction has been performed in accordance with this Consent Decree, EPA will so certify in writing to Settling Work Defendants. This certification shall constitute the Completion of Construction for purposes of this Consent Decree, including, but not limited to, Section XXI

(Covenants Not to Sue by Plaintiff). Certification of Completion of Construction shall not affect Settling Work Defendants' other obligations under this Consent Decree.

50. Completion of the Remedial Action

a. Within 90 days after Settling Work Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Work Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Work Defendants and EPA. If, after the pre-certification inspection, the Settling Work Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within 45 days of the inspection. In the report, a registered professional engineer and the Settling Work Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after consultation with the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the

Performance Standards have not been achieved, EPA will notify Settling Work Defendants in writing of the activities that must be undertaken by Settling Work Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Work Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with "scope of the remedy selected in the ROD" as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Work Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Work Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

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

51. Completion of the Work

a. Within 90 days after Settling Work Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Work Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Work Defendants, EPA. If, after the pre-certification inspection, the Settling Work Defendants still believe that the Work has been fully performed, Settling Work Defendants shall submit a written report requesting certification to EPA for approval, with a copy to the State within 45 days of the inspection. In the report, a registered professional engineer and the Settling Work Defendants' Project Coordinator shall state that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Work Defendant or the Settling Work Defendants' Project Coordinator:

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

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

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

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

XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Work Defendants shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Work Defendants shall notify the EPA Emergency Response Unit, Region 5. Settling Work Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency

Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Work Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Work Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

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

XVI. PAYMENT OF RESPONSE COSTS

54. a. Payments by Settling Cash Defendants: Within 30 days of the date of entry of this Consent Decree, all funds to be paid by each Settling Cash Defendant shall be paid to the Settling Work Defendants as established and designated by mutual agreement of the Settling Work Defendants and Settling Cash Defendants in contribution towards the Work and fulfillment of legal obligations related to the Site. Each Settling Cash Defendant's obligations under this Consent Decree shall be limited to the payment of its requisite amount, except as specifically provided in Paragraphs 6.a and 84; no Settling Cash Defendant shall be responsible for any payment required of any other Party. The failure of any Settling Cash Defendant to satisfy its

payment obligation pursuant to this Paragraph shall not defer the obligations of the Settling Work Defendants under this Consent Decree. The name of each Settling Cash Defendant shall be submitted to the United States as provided in Section XXVI (Notices and Submissions) upon execution of the Consent Decree by each Settling Cash Defendant and will subsequently be appended to Appendix E.1 of this Consent Decree prior to entry.

b. Except as provided in subparagraph c. of this Paragraph, Settling Defendants shall not be required to reimburse EPA for Future Response Costs. EPA may, however, seek reimbursement of Future Response Costs from the non-settling PRPs.

c. Notwithstanding the provisions of subparagraph b. of this Paragraph, the United States may seek reimbursement of certain Future Response Costs from Settling Work Defendants if either (1) Settling Work Defendants are not in compliance with this Consent Decree, or (2) EPA takes over the Work at the Site under Paragraphs 52 or 85 of this Consent Decree. In the event EPA takes over the work pursuant to Paragraph 52 or 85, EPA may seek, and the Settling Work Defendants shall be responsible for, any Future Response Costs incurred pursuant to those Paragraphs. In the event Settling Work Defendants fail to comply with this Consent Decree and EPA takes action against them to enforce its terms, EPA may seek, and the Settling Work Defendants shall be responsible for, any Future Response Costs incurred in such enforcement action(s). If payment is required, Settling Work Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region and

Site/Spill ID #MID062222997, the DOJ case number 90-11-3-145A, and the name and address of the party making payment. The Settling Work Defendants shall send the check(s) to

USEPA Superfund Accounting Office
P.O. Box 70753
Chicago, Illinois 60673

and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and Superfund Accounting, PO Box 70753, Chicago, IL 60673.

55. Settling Work Defendants may contest payment of any Future Response Costs payable under Paragraph 54 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States, if the United States' accounting is being disputed, pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Work Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 54.c. Simultaneously, the Settling Work Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Michigan and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Work Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to,

information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Work Defendants shall initiate the dispute resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Work Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 54.c. If the Settling Work Defendants prevail concerning any aspect of the contested costs, the Settling Work Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 54.c.; Settling Work Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Work Defendants' obligation to reimburse the United States for its Future Response Costs.

56. In the event that any payments which may be required by Paragraph 54.c. are not made within 30 days of the Settling Work Defendants' receipt of the bill, Settling Work Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Work Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Work Defendants'

failure to make timely payments under this Section. The Settling Work Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 54.c.

XVII. INDEMNIFICATION AND INSURANCE

57. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Work Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Work Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Work Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Work Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Work Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Work Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Work Defendants in carrying out activities

pursuant to this Consent Decree. Neither the Settling Work Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Work Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 57.a., and shall consult with Settling Work Defendants prior to settling such claim.

58. Settling Work Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Work Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Work Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Work Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

59. No later than 15 days before commencing any on-site Work, Settling Work Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 50.b. of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of one million dollars, combined single limit, and automobile liability insurance with limits of one million dollars, combined single limit, naming the United States as an additional insured. In addition, for the

duration of this Consent Decree, Settling Work Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Work Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Work Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Work Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Work Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Work Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

60. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized

to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

61. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region 5, within 48 hours of when Settling Defendants first knew that the event might cause a delay. Within 5 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling Defendants,

any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

62. If EPA, after a consultation with the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Work Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

63. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 60 and 61, above. If Settling Defendants carry this burden, the delay at issue shall be

deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

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

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

66. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify

the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 67 or Paragraph 68.

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

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

67. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree.

Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

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

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

c. Any administrative decision made by EPA pursuant to Paragraph 67.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial

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

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

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 66, the Director of the Waste Management Division, EPA Region 5, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

69. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 77. Notwithstanding the stay of

payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

70. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 71 and 72 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Work Defendants shall include completion of the activities under this Consent Decree, or any schedule or work plan approved under this Consent Decree identified below, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree

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

Penalty Per Day of Noncompliance

| <u>1 -14 Days</u> | <u>15+ Days</u> | <u>15-30 Days</u> |
|-------------------|-----------------|-------------------|
| \$250/day | \$500/day | \$1,000/day |

b. Failure of Settling Work Defendants to submit the following documents on time: ARDPP, RA Work Plan, Inspection Report, O&M Plan Addendum, Construction

Report, Remedial Action Report, and Work Report, Remedial Action Completion Report, Work Reports, Monthly Progress Reports, and other written documents other than those identified.

c. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph d:

Penalty Per Day of Noncompliance

| <u>1 -14 Days</u> | <u>15+ Days</u> | <u>15-30 Days</u> |
|-------------------|-----------------|-------------------|
| \$1,000/day | 3,000/day | 5,000/day |

d. Failure of Settling Work Defendants to commence on-site construction activities according to the approved schedule and/or perform the Work and for any other noncompliance under this Consent Decree.

e. A stipulated penalty of \$1000.00 per day per violation shall accrue and shall be payable to the United States by any Settling Cash Defendant for its failure to make timely payment of the amount payable by such Settling Cash Defendants under Section XVI (Payment of Response Costs) of this Consent Decree, in addition to any Interest on such amounts and such other remedies or sanctions available to Plaintiff.

72. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 85 of Section XXI (Covenants Not to Sue by Plaintiff), Settling Work Defendants shall be liable for a stipulated penalty in the amount of \$75,000.

73. 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 Work Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Waste Management Division, EPA Region V, under Paragraph 67.b. or 68.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Work Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

75. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Work Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Work Defendants invoke the Dispute Resolution

procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to:

USEPA Superfund Accounting Office
P.O. Box 70753
Chicago, Illinois 60673

and shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #MID06222297, the DOJ Case Number 90-11-3-145A, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions).

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

77. Penalties shall continue to accrue as provided in Paragraph 73 during any dispute resolution period, but need not be paid until the following:

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

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

c. If the District Court's decision is appealed by any Party, Settling Work Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Work Defendants to the extent that they prevail.

78. a. If Settling Work Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Work Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 74.

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

79. 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 PLAINTIFF

80. a. In consideration of the actions that will be performed by the Settling Work Defendants and Settling Owner Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 81, 82, and 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Work Defendants and Settling Owner Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the entry of the Consent Decree by the Court. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Work Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Work Defendants and do not extend to any other person.

b. In consideration of the payments that will be made by each Settling Cash Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 81, 82, and 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Cash Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the entry of the Consent Decree by the Court. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50.b of Section XIV

(Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Cash Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Cash Defendants and do not extend to any other person.

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

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

82. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Work Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for costs of response (other than EPA oversight costs) if, subsequent to Certification of Completion of the Remedial Action:

(i) conditions at the Site, previously unknown to EPA, are discovered, or
(ii) information, previously unknown to EPA, is received, in whole or in part,
and these previously unknown conditions or this information together with other relevant
information indicate that the Remedial Action is not protective of human health or the
environment.

83. For purposes of Paragraph 81, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the effective date of this Consent Decree and set forth in the administrative record. For purposes of Paragraph 82, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

84. General reservations of rights as to Settling Defendants.

The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 80. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

- (2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- (3) liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;
- (4) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- (5) criminal liability;
- (6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action;
- (7) with respect to Settling Work Defendants only, liability prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 12 (Modification of the Remedial Design Document or Related Work Plans); and
- (8) with respect to Settling Work Defendants only, liability for Future Response Costs pursuant to Paragraph 54 c.

85. Work Takeover In the event EPA determines that Settling Work Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in

their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Work Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 67, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Work Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs).

86. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

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

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

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

c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

88. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Work Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

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

treatment, of hazardous substances at the Site or having accepted for transport for disposal or treatment of hazardous substances at the Site, if

a. Any materials contributed by such person to the Site constituting Municipal Solid Waste (MSW) or Municipal Sewage sludge (MSS) did not exceed 0.2% of the total volume of waste at the Site; and

b. Any materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site.

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

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

91. Except as provided in Paragraph 89 nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 89 each of the Parties expressly reserves any and all rights (including, but not

limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

92. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for Matters Addressed in this Consent Decree.

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

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

95. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the

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

XXIV. ACCESS TO INFORMATION

96. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

97. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA or if EPA has notified Settling Work Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

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

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

XXV. RETENTION OF RECORDS

99. a. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 51.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling

Defendants' receipt of EPA's notification pursuant to Paragraph 51.b of Section XIV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

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

101. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State

or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVI. NOTICES AND SUBMISSIONS

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

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ 90-11-3-145A

As to EPA

Director, Superfund Division
United States Environmental Protection Agency
Region V
77 W. Jackson Ave (Mail Code SR-6J)
Chicago, IL 60604

Dion Novak
EPA Project Coordinator
United States Environmental Protection Agency
Region 5
77 W. Jackson Ave (Mail Code SR-6J)
Chicago, IL 60604

As to the State:

Robert L. Franks
Superfund Section Environmental Response Section
Michigan Department of Environmental Quality
Knapps Centre
PO Box 30426
Lansing, MI 48909-7926
(517) 335-3392

As to the Settling Work Defendants:

Linda Hicken
RMT, Inc.
744 Heartland Trail
Madison, WI 53717

As to the Settling Cash Defendants:

The persons identified as designated agents for service of process for each Settling Cash Defendant on the corresponding signature page to this Consent Decree.

As to Settling Owner Defendants:

The persons identified as designated agents for service of process for each Settling Owner Defendant on the corresponding signature page to this Consent Decree.

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the Statement of Work (SOW).

"Appendix C" is the October 1998 Explanation of Significant Differences, as amended on December 23, 1998.

"Appendix D" is the description and/or map of the Site.

"Appendix E" is the complete list of the Settling Defendants.

XXX. COMMUNITY RELATIONS

106. Settling Work Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Work Defendants under the Plan. Settling Work Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Work Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

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

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

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXXIII. SIGNATORIES/SERVICE

112. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General of Environment and Natural Resources Division of the Department of Justice certifies that 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.

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

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


SO ORDERED THIS ____ DAY OF _____, 19__.

United States District Judge

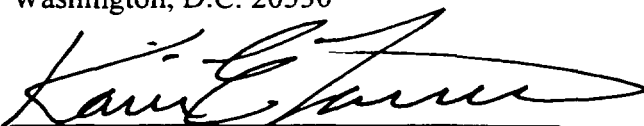
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____

 5/17/95

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530



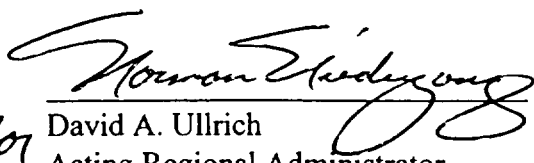
KAREN E. TORRENT
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, DC 20044-7611

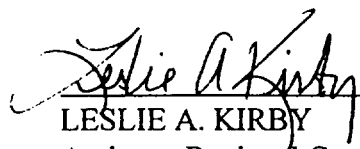
MICHAEL DETTMER
United States Attorney for the
Western District of Michigan

Dated: _____

W. FRANCESCA FERGUSON
Assistant United States Attorney
For the Western District of Michigan
P.O. Box 208
Grand Rapids, Michigan 49501-0208
(616) 456-2404

Date: APR 02 1999

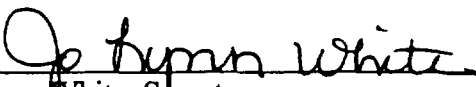

for David A. Ullrich
Acting Regional Administrator
U.S. Environmental Protection Agency
Region V
77 West Jackson
Chicago, Illinois 60604


LESLIE A. KIRBY
Assistant Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR: Allied Waste Systems, Inc.
(on behalf of itself, Bell Pick-Up
Service, Inc., and G. VanDyken
Disposal, Inc.)

Date: 3-15-99



Jo Lynn White, Secretary
15880 N. Greenway-Hayden Loop, Suite 100
Scottsdale, Arizona 85260

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

Name: Jo Lynn White
Title: Secretary
Address: 15880 N. Greenway-Hayden Loop, Suite 100
Scottsdale, AZ 85260
Tel. Number: 602-423-2946 ext. 115

Name: Kenneth W. Maher, Esq.
Title: Attorney At Law
Address: 8888 Keystone Crossing, Suite 1300
Indianapolis, IN 46240
Tel Number: 317-357-3050

United States v. The City of Grand Rapids, Michigan et al.
Butterworth #2 Landfill Superfund Site
CONSENT DECREE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR AMERICAN PREMIER UNDERWRITERS, INC.

Date: 3/15/99



MICHAEL L. CIOFFI
Vice President, Assistant General Counsel
One East Fourth Street
900 Provident Tower
Cincinnati, Ohio 45202

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

Name: Frederick J. Dindoffer
Title: Attorney
Address: 100 Renaissance Ctr., 34th Fl. Detroit, MI 48243
Tel. Number 313 393 7595

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR AMWAY CORPORATION

Date:

3/16/99

Dustin P. Ordway

Dustin P. Ordway, Attorney
Miller, Johnson, Snell & Cummiskey, P.L.C.
250 Monroe Avenue, N.W., Suite 800
Grand Rapids, Michigan 49503

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

Name: Dustin P. Ordway
Title: Attorney
Address: 250 Monroe, N.W., Ste. 800, Grand Rapids MI 49503
Tel. Number: 616/831-1706

United States v. The City of Grand Rapids, Michigan et al.
Butterworth #2 Landfill Superfund Site
CONSENT DECREE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan*, et al., (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

For Settling Cash Defendant BASF Corporation, as successor in interest to Inmont Corporation

Date: 3-12-99

W.F. Leikin
Name: William F. Leikin
Title: Attorney In Fact
United Technologies Corporation
One Financial Plaza
Hartford, Connecticut 06101


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

Name: Thomas W. Daggett
Title: Attorney
Address: Wildman Harrold Allen & Dixon
225 W. Wacker Drive, Chicago Ill., 60606
Tel. Number (312) 201-2506

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR BELL PACKAGING CORPORATION

Dated: 3-26-99


Anita Doepke
Vice President, Regulatory Affairs
Bell Packaging Corporation
2000 Beverly S.W.
Grand Rapids, MI 49509

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

James G. O'Connor
Dickinson Wright PLLC
200 Ottawa Avenue, N.W.
Suite 900
Grand Rapids, MI 49503
(616) 458-1300

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR Bemis COMPANY, INC.

(on behalf of Sackner Products)

Date: March 15, 1995

Richard Pryor

[Name -- Please Type] Richard Pryor
[Title -- Please Type] Corporate Risk Manage
[Address -- Please Type] 222 S. 9th Street,
Suite 2300
MPLS, MN 55402-4099

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

Name: [Please Type]

Title: _____

Address: _____

Tel. Number _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Allied Waste Systems, Inc. et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

Beacon Brunswick
FOR *Drug* COMPANY, INC.
Successor to Hazetone + Permas
Milan A. Sawdei

Date: March 29, 1999

[Name -- Please Type] Milan A. Sawdei
[Title -- Please Type] Executive Vice President,
[Address -- Please Type] Chief Legal Officer and Sec.
4000 Metropolitan Drive
Orange, California 92868

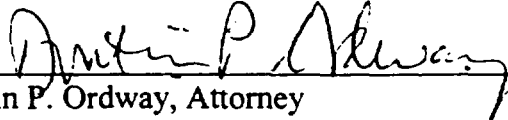
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type]
Title: _____
Address: _____
Tel. Number _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR BISSELL, INC. (ON BEHALF OF
ITSELF, IMPERIAL GRAPHICS,
INC. f/k/a IMPERIAL BUSINESS
FORMS AND MICHIGAN TAG CO.)

Date: 3/16/99


Dustin P. Ordway, Attorney
Miller, Johnson, Snell & Cumiskey, P.L.C.
250 Monroe Avenue, N.W., Suite 800
Grand Rapids, Michigan 49503

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

Name: Dustin P. Ordway
Title: Attorney
Address: 250 Monroe, N.W., Ste. 800, Grand Rapids MI 49503
Tel. Number: 616/831-1706

United States v. The City of Grand Rapids, Michigan et al.
Butterworth #2 Landfill Superfund Site
CONSENT DECREE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR BLACKMER

Date: 3/16/99



Dale Wagner

Safety Manager

1809 Century Avenue, S.W.

Grand Rapids, Michigan 49509

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

Name: Dustin P. Ordway

Title: Attorney

Address: 250 Monroe, N.W., Ste. 800, Grand Rapids MI 49503

Tel. Number 616/831-1706

United States v. The City of Grand Rapids, Michigan et al.
Butterworth #2 Landfill Superfund Site
CONSENT DECREE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

Building Repair of Grand Rapids, Inc.
FOR _____ COMPANY, INC.

Date: Mar 17-99

Roger Siebelink

[Name -- Please Type] Roger Siebelink
[Title -- Please Type] President
[Address -- Please Type] 2201 Kalamazoo Ave. S
Grand Rapids MI 49507

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

Name: [Please Type] Same as above
Title: _____
Address: _____
Tel. Number _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

CAMBRIDGE PRODUCTS

Date: March 16, 1999

By: Wallace Miller President 3-16-99
Wallace Miller, President

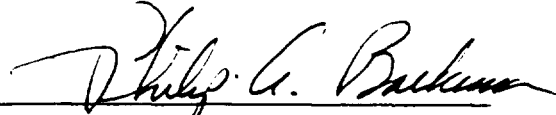
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Mark D. Sevald
Title: Attorney
Address: Borre, Peterson, Fowler & Reens, P.C.
300 Ottawa, N.W., Suite 500
Grand Rapids, MI 49503
(616) 459-1971

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

THE CITY OF GRAND RAPIDS

Date: March 17, 1999



Name: Philip A. Balkema
Title: City Attorney
Address: 300 Monroe Ave., NW Room 620
Grand Rapids, MI 49503

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

Name: Philip A. Balkema
Title: City Attorney
Address: 300 Monroe Ave., NW Room 620, Grand Rapids, MI 49503
Tel. Number: 616/456-3181

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR COCA-COLA BOTTLING COMPANY OF MICHIGAN,
A DIVISION OF JOHNSTON COCA-COLA BOTTLING
GROUP, INC.

Date: March 17, 1999

Lowry F. Kline
Lowry F. Kline
Executive Vice President and General Counsel
Coca-Cola Enterprises Inc.
P.O. Box 723040
Atlanta, GA 31139-0040

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

Name: Brian E. Rumphrey
Title: Attorney
Address: Miller & Martin LLP
Tel. Number Suite 1000, Volunteer Building
832 Georgia Avenue
Chattanooga, TN 37402
423-756-6600

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR CONSUMERS ENERGY COMPANY

Date: 3/16/99

David A. Mikelonis

David A. Mikelonis
Senior Vice President and General Counsel
212 West Michigan Avenue
Jackson, MI 49201-2277

APPROVED AS TO FORM
J.P. Dickey 3/16/99
CONSUMERS ENERGY COMPANY
LEGAL DEPARTMENT

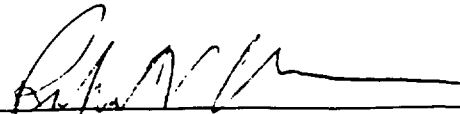
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: John P. Dickey
Title: Attorney
Address: 212 West Michigan Avenue
Jackson, MI 49201-2277
Tel. Number: (517) 788-1846

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR CSX TRANSPORTATION, INC.

Date: March 12, 1999

 (Signature)
(Name - please type) Robert V. Allen
(Title - please type) General Manager-Safety, Environmental and Operating Practices
500 Water Street
Jacksonville, Florida 32202

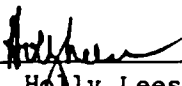
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Alan Bennett
Title: Attorney
Address: 333 Bridge Street, NW, Suite 800, Grand Rapids MI
Tel. Number (616) 459-1171 49504-5360

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR DAIMLERCHRYSLER CORPORATION

Date: March 16, 1999


Name: Holly Leese
Title: Assistant Secretary
Address: 1000 Chrysler Drive
CIMS 485-14-18
Auburn Hills, MI 48326-2766

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

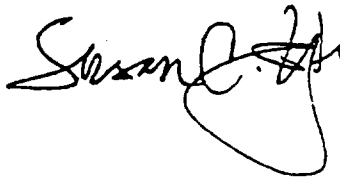
Name: Steven C. Kohl
Title: Attorney
Address: Howard & Howard Attorneys, P.C.
1400 North Woodward Ave
Bloomfield Hills, Michigan 48304-2856
Tel. Number: (248)723-0320

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.* (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR Dragon Walthers aka Lucas Vandy
Walthers ERAS COMPANY, INC.

Date: 3.17.99

SUSAN C. NYSTRÖM



[Name -- Please Type] ATTORNEY
[Title -- Please Type] 10 SIERRA VISTA
[Address -- Please Type] LAGUNA NIGUEL CA 72677

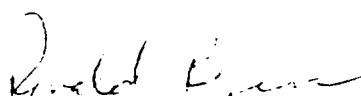
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] SUSAN C. NYSTRÖM
Title: ATTORNEY
Address: 10 SIERRA VISTA LAGUNA NIGUEL CA 72677
Tel. Number 749 249 9667

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR EVANS TEMPCON

Date: 3-16-99



Ron Byers

President
701 Ann Street, N.W.
Grand Rapids, Michigan 49504

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

Name: Dustin P. Ordway
Title: Attorney
Address: 250 Monroe, N.W., Ste. 800, Grand Rapids MI 49503
Tel. Number 616/831-1706

United States v. The City of Grand Rapids, Michigan et al.
Butterworth #2 Landfill Superfund Site
CONSENT DECREE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR Gallmeyer & Livingston Co. COMPANY, INC.


Date: 3/16/79

TEL: 616-451-2865
CHARLES GALLMEYER-PRESIDENT
GALLMEYER & LIVINGSTON
336 STRAIGHT AVE SW
GRAND RAPIDS MI 49504-6482

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

Name: [Please Type]
Title: _____
Address: _____
Tel. Number _____

The UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR GENERAL MOTORS CORPORATION

Date: March 1, 1999

Don A. Schiemann

Don A. Schiemann
Attorney
General Motors Corporation
Legal Staff (MC 482-112-149)
3044 W. Grand Blvd.
Detroit, MI 48202

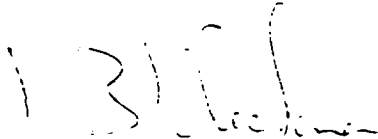
Agent Authorized to Accept Service on Behalf
of Above-signed Party:

Name: Theresa L. Cerwin
Title: Authorized Agent
Address: General Motors Corporation
Legal Staff (MC 482-207-722)
3031 W. Grand Blvd.
Detroit, MI 48202
Tel: (313) 974-1822

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et. al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR THE GOODYEAR TIRE & RUBBER COMPANY

Date: March 16, 1999



K. B. Kleckner, Vice President
The Goodyear Tire & Rubber Company
1144 E. Market Street
Akron, OH 44316-0001

Attest:



J. Boyazis
Secretary

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

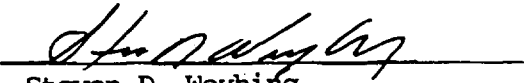
Name: Neal T. Rountree
Title: Attorney
Address: The Goodyear Tire & Rubber Company
1144 E. Market St., Akron, OH 44316-0001
Tel. Number: 330-796-3737
Fax Number: 330-796-8836

United States v. The City of Grand Rapids, Michigan, et. al.
Butterworth #2 Landfill Superfund Site
CONSENT DECREE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al., (W.D. Michigan)*, relating to the Butterworth Landfill Superfund Site.

FOR: HAVILAND PRODUCTS COMPANY

Date: 3/16/99



Steven D. Weyhing
Attorney at Law
Kelley, Cawthorne & Ralls
120 N. Washington Square, Suite 1050
Lansing MI 48933

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

Name: Steven D. Weyhing
Title: Attorney at Law
Address: 120 N. Washington Sq., Ste. 1050, Lansing, MI 48933
Tel. Number: (517) 371-1400

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

For Settling Cash Defendant Ingersoll-Rand Company on behalf of Clark Equipment Company
and Tyler Refrigeration Corporation

Date: 7/16/76 15, 1976



Name: Patricia Nachtigal
Title: Vice President and General Counsel
Ingersoll-Rand Company
200 Chestnut Ridge Road
Woodcliff Lake, New Jersey 07675

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

Name: Thomas W. Daggett
Title: Attorney
Address: Wildman Harrold Allen & Dixon
225 W. Wacker Drive, Chicago Ill., 60606
Tel. Number (312) 201-2506

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

IRWIN SEATING COMPANY,
Settling Cash Defendant

Date:

4-21-99



Charles M. Denton (P33269)

Attorneys for Irwin Seating Company

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP

Bridgewater Place

P.O. Box 352

Grand Rapids, MI 49501-0352

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

Charles M. Denton

Attorneys for Irwin Seating Company

VARNUM, RIDDERING, SCHMIDT & HOWLETT LLP

Bridgewater Place

P.O. Box 352

Grand Rapids, MI 49501-0352


Telephone: 616/336-6000

Telecopy: 616/336-7000

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al., (W.D. Michigan)*, relating to the Butterworth Landfill Superfund Site.

FOR KEEBLER COMPANY

Date: March 18, 1999



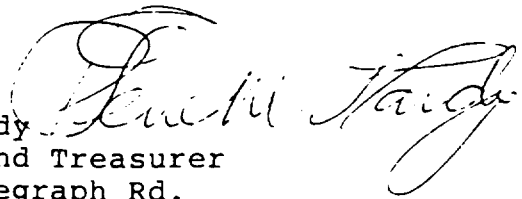
[Name -- Please Type] Thomas E. O'Neill
[Title -- Please Type] Vice President & Secretary
[Address -- Please Type] 677 Larch Avenue
Elmhurst, IL 60126-1588

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

Name: [Please Type] The Corporation Company
Title: c/o CT Corporation System
Address: 30600 Telegraph Road, Suite 3275, Bingham Farms,
Tel. Number (810) 646-9033 MI 48025

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al., (W.D. Michigan)*, relating to the Butterworth Landfill Superfund Site.

FOR LA-Z-BOY, INC.



Gene M. Hardy
Secretary and Treasurer
1284 N. Telegraph Rd.
Monroe, MI 48162

Date: 3-15-99

[Name -- Please Type]
[Title -- Please Type]
[Address -- Please Type]

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

Name: [Please Type] Jim Klarr
Title: Asst. Secretary/Tax Counsel
Address: 1284 N. Telegraph Rd., Monroe, MI 48162
Tel. Number: 734-241-3351

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR *M.M. COMPANY, INC.*
*Lilly Industries, Inc. as successor in
interest to Guardsman Products, Inc.*

Date: 3/15/99

John M. Kyle III

[Name -- Please Type] John M. Kyle III
[Title -- Please Type] Its Attorney
[Address -- Please Type] Barnes & Thornburg
11 South Meridian Street
Indianapolis, IN 46204

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

Name: [Please Type] E. Sean Griggs
Title: Its Attorney
Address: Barnes & Thornburg, 11 S. Meridian St., Indianapolis, IN 46
Tel. Number 317/236-1313

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan) relating to the Butterworth Landfill Superfund Site.

FOR MANNESMANN DEMATIC RAPISTAN CORP.

Date: MARCH 15, 1999

By: William J. [Signature]
Its: VICE PRESIDENT OF FINANCE
507 Plymouth Ave. NE
Grand Rapids, MI 49505

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

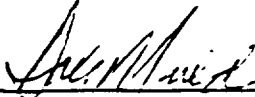
Name: Jeffrey R. Heinze
Title: General Counsel
Address: 507 Plymouth NE, Grand Rapids, MI 49505
Tel. Number : (616)451-6524

United States v. City of Grand Rapids, Michigan, et al.
Butterworth #2 Landfill Superfund Site
Consent Decree

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR MASTER FINISH COMPANY

Dated: 3/15/99



Dale Mulder
Master Finish Company
2100 Nelson, S.E.
Grand Rapids, MI 49510-7505

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

James G. O'Connor
Dickinson Wright PLLC
200 Ottawa Avenue, N.W.
Suite 900
Grand Rapids, MI 49503
(616) 458-1300

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR Master Lock COMPANY, INC.

Date: 3/17/99

John E. Newman

[Name -- Please Type]
[Title -- Please Type]
[Address -- Please Type]

Plant Manager


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

Name: [Please Type] Donald P. Gallo
Title: Legal Counsel
Address: Michael Best & Friedrich LLP
100 East Wisconsin Ave.
Tel. Number Milwaukee, WI 53202
(414)271-6560

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan*, et al., (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR METROMEDIA INTERNATIONAL GROUP, INC.

Date: March 16, 1999



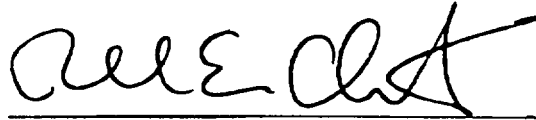
Arnold L. Wadler, Esq.
Executive Vice President
Metromedia International Group, Inc.
One Meadowlands Plaza
East Rutherford, NJ 07073-2137

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

Name: James P. Ray, Esq.
Title: Attorney
Address: Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
Tel. Number: (860) 275-8257

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Allied Waste Systems, Inc., et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR
MICHIGAN CONSOLIDATED GAS COMPANY



Date: March 29, 1999

Ronald E. Christian
Vice President, General Counsel and Secretary
Michigan Consolidated Gas Company
500 Griswold, 9th Floor
Detroit, Michigan 48226
(313) 256-5204

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

Ronald E. Christian
Vice President, General Counsel and Secretary
Michigan Consolidated Gas Company
500 Griswold, 9th Floor
Detroit, Michigan 48226
(313) 256-5204

United States v. Allied Waste Systems, et al.
Butterworth #2 Landfill Superfund Site
CONSENT DECREE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR Midwest Plating COMPANY, INC.

Date: 3-16-99

Brian Wortman, President

[Name -- Please Type]

[Title -- Please Type]

[Address -- Please Type]

613 North Ave. N.E.

Grand Rapids, MI 49503

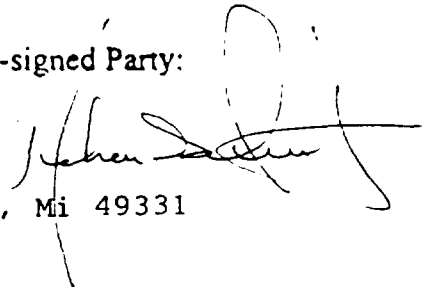
X Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] Richard J. Quist

Title: Attorney

Address: 609 W. Main St., Lowell, MI 49331

Tel. Number (616) 897-7141

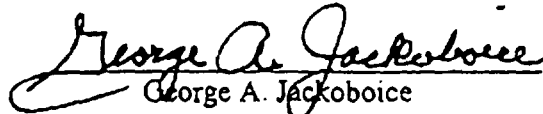


THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR MONARCH HYDRAULICS, INC.

Hydraulics, Inc.

Date: 3-12-99



George A. Jackoboice
President
1363 Michigan NE
Grand Rapids, MI 49503

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

George A. Jackoboice
President
1363 Michigan NE
Grand Rapids, MI 49503
616-458-1306

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

NL Industries, Inc., ~~on behalf of Dackie Jones, Inc.~~

FOR _____ COMPANY, INC.

by *David B. Garten*

*DAVID B. GARTEN
Vice President, General Counsel + Secretary
16825 Northchase Drive*

Date: *April 20*

[Name -- Please Type]

HOUSTON, TX 77060

[Title -- Please Type]

[Address -- Please Type]

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

Name: [Please Type] *MARCUS A. MARTIN*

Title: *Counsel*

Address: *1630 30th St, Suite 548 Boulder, CO 80301*

Tel. Number *302.422.3950*

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR OWENS CORNING Corporation

Date: 3/15/99



Name Michael I. Miller
Title Vice President & Treasurer
Address: Owens Corning Corporation
One Owens Corning Parkway
Toledo, OH 43659

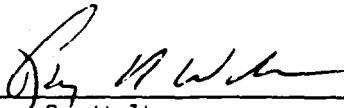
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David Schlaudecker, Esq.
Title: Marshall & Melhorn
Address: Four SeaGate, Eighth Floor
Toledo, OH 43604
Tel. Number: (419) 249-7112

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.* (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR PLASTIC PLATE INC.

Date: March 12, 1999



Gary R. Walker
Director of Management
5460 Cascade Road, S.E.
Grand Rapids, MI 49546

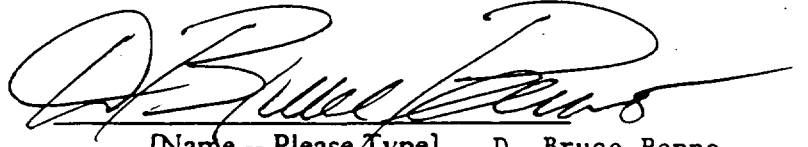
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Gary R. Walker
Title: Director of Management
Address: 5460 Cascade Road, S.E., Grand Rapids, MI 49546
Tel. Number (616) 949-6570

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

PRIDGEON & CLAY, INC.
FOR _____ COMPANY, INC.

Date: March 16, 1999



[Name -- Please Type] D. Bruce Penno,
[Title -- Please Type] Vice President
[Address -- Please Type] 50 Cottage Grove, S.W.
Grand Rapids, Michigan 4

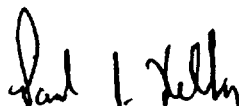
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type]
Title: _____
Address: _____
Tel. Number _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR Printing Arts COMPANY, INC.

Date: March 25, 1999



[Name -- Please Type] Paul J. Kelly
[Title -- Please Type] Exec. Vice President/Owner
[Address -- Please Type] 1655 Michigan NE
Grand Rapids, MI 49503

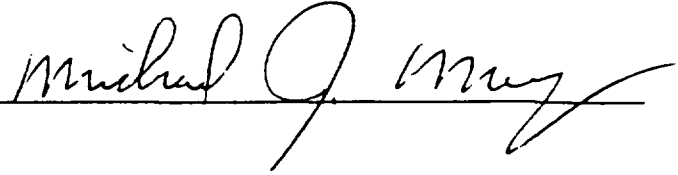
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type]
Title: _____
Address: _____
Tel. Number: _____

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating tot he Butterworth Landfill Superfund Site.

FOR RELIANCE FINISHING COMPANY

Date: 3-12-99



1236 Judd, S.W.
Grand Rapids, Michigan 49509

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

Name: Dustin Ordway
Title: Atty / Miller Johnson
Address: Calder Plaza Bldg, 250 Monroe, Suite 800, Grand Rapids, MI
Tel. Number 616-831-1700

United States v. The City of Grand Rapids, Michigan et al.
Butterworth #2 Landfill Superfund Site
CONSENT DECREE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR ROWE INTERNATIONAL, INC.

Date. 3/4/98

Edward Gundrum (SIGNATURE)
(Name - please type) Edward Gundrum
(Title - please type) VP-Operations
1500 Union, SE
Grand Rapids, Michigan 49507

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

Name: Alan Bennett
Title: Attorney
Address: 333 Bridge Street, NW, Suite 800, Grand Rapids MI
Tel. Number (616) 459-1171 49504-5360

Leonard CHARLA - #27569 v1 - EPA 299 Consent Decree

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.* (W. D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR RYDER TRUCK RENTAL, INC.
Successor to Atlas Truck Leasing

Date: March 15, 1999



Diana Hull, Esq.
Assistant General Counsel
Ryder System, Inc.
3600 N.W. 82nd Avenue
Miami, Florida 33166

Agent authorized to accept service on behalf of above-signed Party:

Name: Leonard P. Charla, Esq.
Title: Attorney
Address: Butzel Long, Suite 900
150 W. Jefferson Avenue
Detroit, MI 48226

Telephone: 313.225.7016
Fax: 313.225.7080

United States v. The City of Grand Rapids, Michigan, et al.
Butterworth 82 Landfill Superfund Site
CONSENT DECREE

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al., (W.D. Michigan)*, relating to the Butterworth Landfill Superfund Site.

FOR SIMMONS ROOFING COMPANY

Marjorie Simmons
Gary L. Simmons

Date: April 26, 1999

Marjorie Simmons and Gary L. Simmons

Address: 2607 Miller, N.W.
Grand Rapids, MI 49544

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

Name: Philip M. Idema

Title: Attorney

Address: 146 Monroe Center, Suite 300, Grand Rapids, MI 49

Tel. Number (616) 458-1075

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR STATE HEAT TREAT, INC.

Date: 3/15/1999

Robert Harvey
By: Robert Harvey
Its: Vice President
520 Thirty-Second Street, S.E.
Grand Rapids, MI 49548

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

Name: Michael B. Ortega
Title: Attorney
Address: Reed, Stover & O'Connor, P.C., 151 S. Rose Street, Suite
Tel. Number Kalamazoo, Michigan 49007
(616) 381-3600

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al., (W.D. Michigan)*, relating to the Butterworth Landfill Superfund Site.

Date: March 15, 1999

For Steelcase Inc.

Edward J. Carr

Edward J. Carr
Senior Vice President, Administration

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

Name: Jon D. Botsford
Title: Vice President, General Counsel and Secretary
Address: 901 44th Street SE, Grand Rapids, MI 49508
Tel. Number: 616.246.9600

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.* (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR C. STODDARD & SONS, INC.

Dated: March 12, 1999

By: 

Geraldine Walker
President
3456 - 12th Street
Wayland, Michigan 49348

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

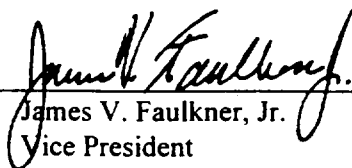
Name: Peter W. Steketee
Title: Attorney for C. Stoddard & Sons, Inc.
Address: 660 Cascade W. Parkway, S.E., Suite 65
Grand Rapids, Michigan 49546
Tel. Number: (616) 949-6551

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al., (W.D. Michigan)*, relating to the Butterworth Landfill Superfund Site.

FOR TENNECO PACKAGING INC.

Date: March 12, 1999

By: _____



James V. Faulkner, Jr.
Vice President
Tenneco Packaging Inc.
1900 W. Field Court
Lake Forest, IL 60045

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

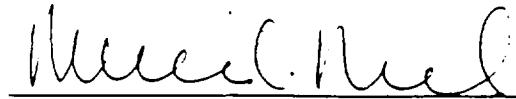
Name: James V. Faulkner, Jr.
Title: Vice President
Address: Tenneco Packaging Inc.
1900 W. Field Court
Lake Forest, IL 60045
Tel. Number: (847) 482-2430

031299

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR VIACOM, INC.

Date: 8/15/99



Mark C. Morril
Vice President, Deputy General Counsel
1515 Broadway
New York, NY 10036


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

Name: MARK C. MORRIL
Title: VP/Deputy General Counsel, VIACOM INC.
Address: 1515 BROADWAY, NEW YORK, NY 10036
Tel. Number 212 846-7775

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. City of Grand Rapids, MI, et al., (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR WASTE MANAGEMENT OF MICHIGAN, INC. ,*

Date: 3/15/99


James Forney
Director - Closed Sites
Waste Management, Inc.
Suite 150
17250 Newburgh Road
Livonia, MI 48152

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

Name: James Forney
Title: Director - Closed Sites
Address: Waste Management, Inc.
Suite 150
17250 Newburgh Road
Livonia, MI 48152
Tel. No.: 734-462-6961

and

Name: Katie A. Moertl
Address: Quarles & Brady LLP
Suite 2500
411 E. Wisconsin Avenue
Milwaukee, WI 53202
Tel. No.: 414-277-5527

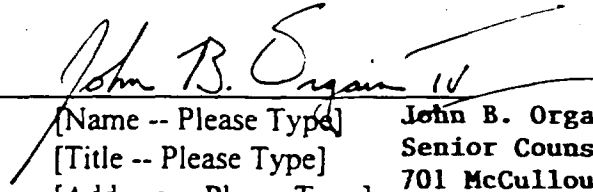
*on behalf of itself, United Waste, Folkertsma Refuse Service, Kamps Bros. Refuse Inc., Industrial Disposal Comp., Chemical Waste Management, Able Sanitation, and on behalf of but without admitting any liability for Pete's Disposal and Wilson's Disposal., for purposes of this agreement only, hereinafter, "Waste Management". "Waste Management" does not include United Sanitation, or United Collection Systems of Grand Rapids.

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

Wickes Manufacturing Company (on behalf of but without admitting liability for Michigan Plating and Stamping Company, Michigan Bumper Company and Crampton Manufacturing Company)

FOR _____ ~~COMPANY, INC.~~

Date: 3/15/99



[Name -- Please Type] **John B. Orgain, IV**
[Title -- Please Type] **Senior Counsel**
[Address -- Please Type] **701 McCullough Drive
Charlotte NC 28262**

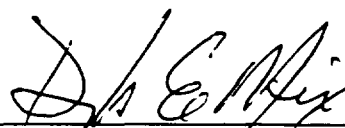
Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: [Please Type] John B. Orgain, IV
Title: Senior Counsel
Address: 701 McCullough Drive, Charlotte NC 28262
Tel. Number (704) 548-2353

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR WHITE CONSOLIDATED INDUSTRIES, INC.

Date: March 9, 1999



Douglas E. Mix
Vice President - Regulatory Affairs
17700 Berea Road
Cleveland, OH 44111

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

Name: Douglas A. McWilliams, Esq.
Title: Attorney, Squire, Sanders & Dempsey L.L.P.
Address: 4900 Key Tower, 127 Public Square, Cleveland, OH 44114
Tel. Number: (216) 479-8332

The UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Allied Waste Systems, Inc., et al.* (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR Whitmire Distribution Corporation,
successor to Humiston-Keeling, Inc.

Date: April 12, 1999



Name: Glenn L. Martin
Title: Vice President

Address: 7000 Cardinal Place
Dublin, Ohio 43017

Agent authorized to Accept Service on Behalf of Whitmire Distribution Corporation:

Name: Stephen T. Falk

Title: Senior Corporate Counsel

Address: 7000 Cardinal Place
Dublin, Ohio 43017

Tel. No.: 614 717 7789

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. The City of Grand Rapids, Michigan, et al.*, (W.D. Michigan), relating to the Butterworth Landfill Superfund Site.

FOR: WOLVERINE WORLD WIDE, INC.

Date: March 15, 1999

Blake W. Krueger
Name: Blake W. Krueger
Title: Executive Vice Pres., General Counsel and Secretary
Address: 9341 Courtland Drive, N.E.
Rockford, Michigan 49341

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

Name: Alan C. Schwartz
Title: Attorney
Address: Miller, Johnson, Snell & Cumiskey, P.L.C.
250 Monroe Avenue, N.W., Ste. 800
Grand Rapids, MI 49503
Telephone: (616) 831-1700

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

| | | |
|---------------------------|---|------------------|
| <hr/> | | |
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. |
| |) | |
| THE CITY OF GRAND RAPIDS, |) | |
| MICHIGAN, et al., |) | |
| |) | |
| Defendants. |) | |
| <hr/> |) | |

CONSENT DECREE

APPENDICES

Appendix A: Record of Decision (ROD)

Appendix B: Statement of Work (SOW)

Appendix C: October 1998 Explanation of Significant Differences, as amended on December 23, 1998.

Appendix D: Map of the Site

Appendix E: List of Settling Defendants

E.1. Settling Cash Defendants

E.2. Settling Owner Defendants

E.3. Settling Work Defendants

U.S. ENVIRONMENTAL
PROTECTION AGENCY

MAY 24 1999

OFFICE OF REGIONAL
COUNSEL