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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civil No. 4-80-469

and

STATE OF MINNESOTA, by its
Attorney General Hubert H.
Humphrey, III, its Department
of Health, and its Pollution
Control Agency,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION;
HOUSING AND REDEVELOPMENT AUTHORITY
OF ST. LOUIS PARK; OAK PARK VILLAGE
ASSOCIATES; RUSTIC OAKS CONDOMINIUM
INC.; and PHILIP'S INVESTMENT CO.,

CONSENT DECREE

Defendants,

and

CITY OF ST. LOUIS PARK,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION,

Defendant,

and

CITY OF HOPKINS,

Plaintiff-Intervenor,

vs.

REILLY TAR & CHEMICAL CORPORATION,

Defendant.

FILED SEP 5 1986
JUDGMENT ENTERED

EPA Region 5 Records Ctr.



234628

TABLE OF CONTENTS

<u>Parts</u>	<u>Page</u>
A. JURISDICTION	1
B. PARTIES	1
C. BACKGROUND	2
D. DEFINITIONS	20
E. PURPOSES OF CONSENT DECREE	28
F. REMEDIAL ACTION PLAN	30
G. REVIEW OF SUBMITTALS	30
H. OTHER DETERMINATIONS BY THE REGIONAL ADMINISTRATOR AND DIRECTOR	35
I. RESOLUTION OF DISPUTES	38
J. CREATION OF DANGER	40
K. REPORTING	41
L. NOTICES	42
M. PAYMENTS UPON FAILURE TO PERFORM	44
N. DELAY OF PERFORMANCE AND EXTENSIONS OF SCHEDULES	49
O. PROJECT LEADERS	53
P. ACCESS	54
Q. REILLY AGREEMENT WITH ST. LOUIS PARK	59
R. PAYMENTS BY REILLY	63
S. OTHER CLAIMS	65
T. OTHER APPLICABLE LAWS	66

U. SETTLEMENT OF LITIGATION AND ADMINISTRATIVE PROCEEDINGS	67
V. RETENTION OF AUTHORITY	74
W. PRODUCTION OF DATA	75
X. NO CLAIMS AGAINST STATE AND FEDERAL SUPERFUND	75
Y. LIABILITY INSURANCE	76
Z. FINANCIAL RESPONSIBILITY	77
AA. MODIFICATION	84
BB. DURATION OF CONSENT DECREE	84
CC. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT	87
DD. INTERPRETATION OF CONSENT DECREE	88
EE. EFFECTIVE DATE	89
FF. CONTINUING JURISDICTION OF THE COURT	89

CONSENT DECREE

The Parties having STIPULATED and AGREED that a judgment may be entered in this action, incorporating the following terms and conditions, and the Court being fully advised in the premises, now before the taking of any testimony and upon the pleadings herein, it is hereby ORDERED, ADJUDGED AND DECREED:

A.

JURISDICTION

The Court has jurisdiction of the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, 42 U.S.C. § 6973, 42 U.S.C. §§ 9606, 9607, and 9613, and the doctrine of pendent jurisdiction, and has jurisdiction over the Parties herein.

B.

PARTIES

The Parties to this Consent Decree are:

1. The UNITED STATES OF AMERICA on behalf of the United States Environmental Protection Agency and, with respect to natural resources damages only, the U.S. Department of Interior ("United States");
2. The STATE OF MINNESOTA, by its Attorney General Hubert H. Humphrey, III, its Department of Health and its Pollution Control Agency ("State");
3. REILLY TAR & CHEMICAL CORPORATION ("Reilly"), an Indiana corporation;

4. The CITY OF ST. LOUIS PARK ("St. Louis Park"), a municipal corporation organized and existing under the laws of the State of Minnesota;

5. The CITY OF HOPKINS ("Hopkins"), a municipal corporation organized and existing under the laws of the State of Minnesota;

6. The HOUSING AND REDEVELOPMENT AUTHORITY OF ST. LOUIS PARK, a municipal corporation organized and existing under the laws of the State of Minnesota;

7. OAK PARK VILLAGE ASSOCIATES, a limited partnership existing under the laws of the State of Minnesota;

8. PHILIP'S INVESTMENT CO., a Minnesota corporation.

This Consent Decree shall apply to and be binding upon the Parties, their officials, officers, directors, agents, servants, employees, subsidiaries, successors and assigns.

C.

BACKGROUND

1. From 1917 until 1972, Reilly was engaged in the business of coal tar distillation and pressure treatment of wood products at its plant site at 7200 Walker Street, St. Louis Park, Hennepin County, Minnesota (hereinafter "the Site"). The Site encompassed an eighty (80) acre tract, which consists of Lot 1, Block 1; Lot 1, Block 2; Lot 1, Block 3; Lot 1, Block 4; Lot 1, Block 5; Lot 1, Block 6; Lot 1, Block 7; Lot 1, Block 8; Lot 1, Block 9; Lot 1, Block 10; all in Oak Park

Village according to the plat thereof on file in the office of the County Recorder of Hennepin County, Minnesota.

2. On or about October 2, 1970, the State, through its Pollution Control Agency, and St. Louis Park, filed a complaint in the Hennepin County District Court of the State of Minnesota alleging violations by Reilly of state and municipal pollution control laws and regulations. State of Minnesota by the Minnesota Pollution Control Agency, and the City of St. Louis Park v. Reilly Tar & Chemical Corporation, Hennepin County District Court, Civil File No. 670767 (hereinafter "Hennepin County Lawsuit").

3. On April 14, 1972, St. Louis Park agreed to purchase the Site from Reilly. The purchase agreement included a promise by St. Louis Park to obtain dismissals with prejudice by the State and by St. Louis Park of the Hennepin County Lawsuit. The purchase agreement also provided for acceptance by St. Louis Park of the property in an "as is" condition, including "any and all questions of soil and water impurities and soil conditions," and an agreement by St. Louis Park "to make no claim against Reilly for damages relative to soil and water impurities, if any, in any way relating to the premises sold herein, or relative to any other premises in which the City of St. Louis Park holds an interest. . . ."

4. A closing was scheduled on the property for June 19, 1973. However, the State did not execute a dismissal

of the Hennepin County Lawsuit. Accordingly, the City of St. Louis Park agreed that it would "hold Reilly harmless from any and all claims which may be asserted against it by the State of Minnesota, acting by and through the Minnesota Pollution Control Agency, and will be fully responsible for restoring the property, at its expense, to any condition that may be required by the Minnesota Pollution Control Agency". The City of St. Louis Park and Reilly executed and filed dismissals with prejudice of their claims in the Hennepin County Lawsuit, and the closing took place thereafter.

5. On June 21, 1973, the property was conveyed by quitclaim deed from St. Louis Park to the Housing and Redevelopment Authority of St. Louis Park, Minnesota, which thereafter conveyed part of the property to Oak Park Village Associates, Rustic Oaks Condominium, Inc. and Philip's Investment Co.

The Agreement for Purchase and Sale of Real Estate dated October 4, 1977 and the First Addendum to the Agreement dated October 6, 1977 between the St. Louis Park Housing and Redevelopment Authority and Diversified Equities Corporation [Oak Park Village Associates] regarding Lot 1, Block 3, Oak Park Village, Hennepin County, Minnesota, provides as follows:

14. Environmental Matters

The Agency [St. Louis Park Housing and Redevelopment Authority] shall prepare and shall incur all expenses for any environmental approvals, assessments, environmental impact

statements or such other environmental review documents deemed necessary or desirable by governmental authority.

Agency [St. Louis Park Housing and Redevelopment Authority] agrees to indemnify and save Redeveloper harmless from and against any and all loss or damage Redeveloper or successors may suffer from damage to improvements constructed on the Property as a result of claims, demands, costs or judgments against and arising out of soil or ground water contamination existing as of the date hereof, or caused by conditions existing as of the date hereof.

The Agreement for Purchase and Sale of Real Estate dated June 1, 1979 by and between the Housing and Redevelopment Authority of St. Louis Park and Ben Weber [Philip's Investment Co.] and the City of St. Louis Park regarding Lot 1, Block 6, Oak Park Village, Hennepin County, Minnesota, provides as follows:

14. Environmental Matters.

a. Both the City and the Redeveloper agree that the Stipulation between the City and the PCA dated April 19, 1977, is capable of a possible variety of interpretations. As between the Agency [St. Louis Park Housing and Redevelopment Authority], the City and the Redeveloper, as an inducement to the City and Agency to allow the Redeveloper to develop the Property and as security against the Redeveloper, or its assigns or successors in interest, claiming the right to benefit from a broader interpretation of said Stipulation and as an inducement to the Redeveloper to develop the Property and as security against the City or Agency claiming the right to benefit from a narrower interpretation of said Stipulation, the City, Agency and Redeveloper agree that, as between the parties to this Agreement, this paragraph 14 shall constitute the sole remedy available to Redeveloper against the City and Agency for any action or claim against or loss or damage to the

Redeveloper which is based on, derived from, or related to the soil or groundwater conditions of the Property, and shall constitute, as between the parties to this agreement, their interpretation of the Stipulation.

b. The City will not require the Redeveloper to excavate soil from the Property in question because of soil or groundwater contamination resulting from the operations of the former Republic Creosote Plant.

c. The City will indemnify the Redeveloper from damage consisting of physical destruction or injury to improvements on the property due solely to soil excavation on the Property required by public agencies. This indemnification shall not include consequential damage, lost income, lost profit or other forms of indirect loss or damage nor shall it include damage arising from personal injury. Indemnification shall be on a replacement cost less depreciation basis.

d. The indemnification granted by this agreement shall be secondary to any other rights or potential rights which the Redeveloper may have to compensation for any damage or loss whether through eminent domain, grants or otherwise. The Redeveloper shall exercise good faith effort to seek and obtain such compensation before presenting a claim under this indemnification agreement. Any compensation from any other source for damages indemnified herein shall reduce the indemnification liability of the City dollar per dollar.

e. This indemnification and agreement shall not be assignable except to the first mortgagee and shall terminate on January 1, 1985. All claims to indemnification under this agreement must be made in writing and received by the City Clerk of the City prior to January 2, 1985.

6. In April, 1978, the State moved to amend its complaint in the Hennepin County Lawsuit, alleging that PAH substances contained in Reilly's coal tar and creosote wastes had entered the ground water beneath the Site and that their

further migration threatened to contaminate aquifers relied on for public water supply. At the same time, St. Louis Park moved to intervene as a plaintiff. The motions were granted and interlocutory review was denied by the Minnesota Supreme Court. Reilly subsequently tendered defense of the action to St. Louis Park and counterclaimed against St. Louis Park, asserting that St. Louis Park was responsible for dealing with this problem under the hold harmless agreement made at the time of its purchase of the Site.

7. On or about September 4, 1980, the United States commenced this action by filing a complaint under Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, alleging, inter alia, the existence of an imminent and substantial endangerment to health and the environment due to the handling, treatment, storage, transportation, disposal and presence of hazardous waste at the Site. On or about October 15, 1980, the State and St. Louis Park were granted leave to intervene in the RCRA Section 7003 claim and to assert additional claims under Minnesota law. On or about June 16, 1981, Hopkins was granted leave to intervene in the RCRA Section 7003 claim and to assert additional claims under Minnesota law.

8. On or about September 9, 1981, the United States filed an amended complaint, alleging in addition to the RCRA § 7003 claim, claims under Sections 106 and 107 of the

Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

9. On or about May 27, 1981, the State filed an amended complaint, asserting claims under Section 7003 of RCRA, 42 U.S.C. § 6973, Section 107 of CERCLA, 42 U.S.C. § 9607, Minn. Stat §§ 115.061, 115.07, 115.071, and Minnesota Rule WPC 4(b) [Minn. Rule Part 7100.0020], and Minnesota common law.

10. On or about August 31, 1981, and October 16, 1981, respectively, St. Louis Park and Hopkins filed amended complaints alleging, inter alia, claims under Section 7003 of RCRA, 42 U.S.C. § 6973, Section 107 of CERCLA, 42 U.S.C. § 9607, Minn. Stat. Chapter 116B, and Minnesota common law.

11. On or about April 5, 1985, the Court granted the State's motion for leave to file a second amended complaint, adding claims under the Minnesota Environmental Response and Liability Act ("MERLA"), Minn. Stat. Ch. 115B. The State subsequently filed such a second amended complaint. Pursuant to stipulations, St. Louis Park and Hopkins later also filed second amended complaints, each of which added MERLA claims.

12. Reilly, in its answers to the various complaints referenced above, has denied and continues to deny liability, has raised several affirmative defenses, and has asserted a counterclaim against St. Louis Park. Various other Parties have asserted cross-claims, including a cross-claim by St. Louis Park against the State, a cross-claim of Oak Park Village

Associates against the Housing and Redevelopment Authority of St. Louis Park and a cross-claim of Philip's Investment Co. against Reilly.

13. Since 1969, a number of studies and/or reports, chemical analyses and field investigations relating to the Site have been undertaken. By listing the items below, the Parties do not necessarily endorse the accuracy, correctness, precision, quality, or validity of the information and opinions contained therein. These analyses, investigations and studies include but are not limited to the following:

(a) Studies and/or Reports

- (1) "Ground Water Investigation Program at St. Louis Park, MN," by E. A. Hickok & Associates, Inc., September, 1969.
- (2) "Memorandum of Waste Disposal at Republic Creosote Co. and Reilly Tar & Chemical Co.," by Minnesota Pollution Control Agency (MPCA Board Item), April, 22, 1970.
- (3) "An Assemblage of Analytical Data Regarding the Reilly Tar & Chemical Property, St. Louis Park, Minnesota," by the St. Louis Park Health Department, August 1, 1972.
- (4) "Status Report on Creosote Site and TexaTonka Area", prepared by the St. Louis Park Planning Department, January 11, 1973.
- (5) "Surface and Subsurface Ground Reclamation; Republic Creosote Site, City of St. Louis Park", prepared by OSM Consulting Engineers, April 23, 1973.

- (6) "Storm Water Study; Public Improvement #72--43 (Republic Creosote Area)," prepared by OSM Consulting Engineers, August 6, 1973.
- (7) "Geology of the St. Louis Park Area - A Review by the Minnesota Geological Survey; Report on Investigation of Municipal Water Supply, St. Louis Park," prepared by the Minnesota Department of Health, March 1974.
- (8) "Soil Investigation; Proposed Storm Sewer and Holding Ponds near Highway 7 and Louisiana Avenue, St. Louis Park," prepared by Soil Exploration Co., April 16, 1974.
- (9) "Hydrogeologic Study of the Republic Creosote Site," prepared by Gerald Sunde, Consulting Engineer, July, 1974.
- (10) "Report on Investigation of Phenol Problem in Private and Municipal Wells in St. Louis Park, Minnesota," prepared by Minnesota Department of Health, September, 1974.
- (11) Memorandum from F. F. Heisel, Minnesota Department of Health, to P. Gove, Minnesota Pollution Control Agency. "St. Louis Park Creosote Contamination Study," November 14, 1975.
- (12) "Data Regarding The History and Development of a Storm Sewer System for the City in the Area of the Former Republic Creosote Property," prepared by the City of St. Louis Park, November 15, 1974.
- (13) "Memorandum on Groundwater Contamination, St. Louis Park, MN," by Minnesota Pollution Control Agency, (MPCA Board Item) November 19, 1974.
- (14) "Memorandum on St. Louis Park Groundwater Situation," by the Minnesota Pollution Control Agency, (MPCA Board Item) December 13, 1974.

- (15) "Soil and Ground Water Investigation Coal Tar Distillation and Wood Preserving Site, St. Louis Park - Phase I Report," prepared by Barr Engineering Co., May 1976.
- (16) "Stability Study of Para Benzo Quinone for the City of St. Louis Park," prepared by Sanitary Engineering Laboratories Inc. (SERCO), June 1976.
- (17) "Soil Boring and Chemical Analysis of the Northern Portion of Oak Park Village," prepared by National Biocentric, Inc., September 17, 1976.
- (18) "Soil Contamination by Creosote Wastes," prepared by National Biocentric, Inc., November 1, 1976.
- (19) "Development Plan, Northern Portion, Oak Park Village," prepared by St. Louis Park, December 2, 1976.
- (20) "Review of Recent Studies of Soil Contamination at the Former Republic Creosote Site - Recommendations to City's Proposed Development Plan," by Minnesota Pollution Control Agency, December 28, 1976.
- (21) "Soil and Ground Water Investigation Coal Tar Distillation and Wood Preserving Site, St. Louis Park - Phase II Report," prepared by Barr Engineering Co., June 1977.
- (22) "Assessment of Possible Human Health Effects Resulting from Contamination of the Former Republic Creosote Site," prepared by the Minnesota Department of Health, October 1977.
- (23) "Soil Report; Prepared by Oak Park Village, St. Louis Park, Minnesota," prepared by Soil Testing Service of Minnesota, Inc., January 5, 1978.
- (24) "Recommendations for Plugging or Modification of Abandoned Wells in the

Area of the Former Republic Creosote Plant," prepared by the City of St. Louis Park, January 11, 1978.

- (25) "Report of Well Water Survey, St. Louis Park, Minnesota," prepared by Sanitary Engineering Laboratories, Inc., (SERCO) June-July 1978.
- (26) "Report on the Existing Creosote Problem in St. Louis Park, Minnesota," prepared by James Bailey, Agricultural Engineering, University of Minnesota, July 1, 1978.
- (27) "Health Implications of Polynuclear Aromatic Hydrocarbons in St. Louis Park Drinking Water," prepared by the Minnesota Department of Health, November 1978.
- (28) "Status Report to the MPCA: Proposed Development, Oak Park Village," prepared by St. Louis Park, November 14, 1978.
- (29) "Water Quality Development in Oak Park Village," prepared by St. Louis Park Planning Department, December 15, 1978.
- (30) "Letter Report Tabulating Information on Existing Wells in St. Louis Park," prepared by United States Geological Survey, February 6, 1979.
- (31) "Status Report: St. Louis Park Development," by the Minnesota Pollution Control Agency (MPCA Board Item), March 27, 1979.
- (32) "Progress Report: Investigation of Coal Tar Derivatives in Ground Water - St. Louis Park," prepared by the United States Geological Survey, April 13, 1979.
- (33) "Epidemiologic Investigation of Third National Cancer Survey Data for St. Louis Park, Edina, Richfield and Minneapolis St. Paul SMSA with a

Historical Review of St. Louis Park's Water Supply," prepared by Kari Dusich, September 1979.

- (34) "Emergency Pumpout Well For Reilly Tar Site, St. Louis Park, Minnesota," prepared by Ecology and Environment, Inc., 1980.
- (35) "Examination of Cost Estimate For Three Tasks to be Completed For The Reilly Tar and Chemical Project, St. Louis Park, MN," prepared by Ecology and Environment, Inc., 1980.
- (36) "Summary Report on the City of St. Louis Park Activated Carbon Pilot Plant Study," prepared by Sanitary Engineering Laboratories, Inc., (SERCO), January 11, 1980.
- (37) "Cancer Rates in a Community Exposed to Low Levels of Creosote Components in Municipal Water," prepared by Dusich, Sigurdson, Hall, Dean, Minnesota Medicine, November 1980.
- (38) "Preliminary Evaluation of Ground Water Contamination by Coal Tar Derivative, St. Louis Park, MN," prepared by the United States Geological Survey, January 1981.
- (39) "Report on Drinking Water Treatment and Remedy Evaluation for St. Louis Park, MN," prepared by Eugene A. Hickok and Associates, Inc., April 1981.
- (40) "Report and Statistic - Water Quality: Results of St. Louis Park Water Samples," prepared by H. Taylor, United States Geological Survey, June 10, 1981.
- (41) "Study of Ground Water Contamination in St. Louis Park, MN," prepared by Eugene A. Hickok & Associates, et. al., November 1981.
- (42) "Dispersion and Sorption of Hydrocarbons in Aquifer Material," by

G. Cohn (thesis) University of Minnesota, 1982.

- (43) "Terminating An Endless Search: An Action Approach to Solving the Water Problem," prepared by St. Louis Park, January 11, 1982.
- (44) "Request for Authorization to Negotiate and Enter into Cooperative Agreement with the U.S. EPA to Obtain Funds for Additional Cleanup Work at the Reilly Tar Site, St. Louis Park," by the Minnesota Pollution Control Agency (MPCA Board Item), May 25, 1982.
- (45) "Degradation of Phenolic Contaminants in Ground Water by Anaerobic Bacteria: St. Louis Park, MN," prepared by Erlich, Goerlitz, Godsy & Hult, United States Geological Survey, November 1982.
- (46) "Evaluation of Groundwater Treatment and Water Supply Alternatives for St. Louis Park, MN," prepared by CH2M Hill, 1982-1983.
- (47) "Recommended Plan for a Comprehensive Solution of the Polynuclear Aromatic Hydrocarbon Contamination Problem in the St. Louis Park Area," prepared by Environmental Research & Technology, Inc. for Reilly Tar & Chemical Corporation, April 1983, plus Errata, June 27, 1983 and November 27, 1984.
- (48) "Health Risk Assessment and Environmental Effects of Compounds Contaminating St. Louis Park Groundwater: Selected Two - and Three - Ring Heterocycles and Indene," prepared by Stephen M. Mabley, Minnesota Department of Health, Section of Health Risk Assessment, July 1983.
- (49) "Evaluation of Activated Carbon Treatment Alternative for Polynuclear Aromatic Hydrocarbon Removal for Groundwater in the St. Louis Park Area," prepared by Calgon Carbon Corporation, November 18, 1983.

- (50) "Request for Authorization to Negotiate and Execute an Amendment to the Current Cooperative Agreement with the U.S. Environmental Protection Agency for Investigation and Remedial Action at the Reilly Tar and Chemical Company Hazardous Waste Site in St. Louis Park," by the Minnesota Pollution Control Agency (MPCA Board Item), November 22, 1983.
- (51) "Assessment of Groundwater Contamination by Coal Tar Derivatives, St. Louis Park Area, MN", prepared by M. F. Hult, United States Geological Survey, Open File Report 84-867, 1984.
- (52) "Record of Decision, Remedial Action Alternative Selection," prepared by the United States Environmental Protection Agency, June 6, 1984.
- (53) "Evaluation of Granular Activated Carbon for the Removal of Polynuclear Aromatic Hydrocarbons from Municipal Well Water in St. Louis Park, MN," prepared by Calgon Carbon Corporation, September 10, 1984.
- (54) "Sampling and Analysis Plan for Calgon Accelerated Column Testing of SLP 15 Water," prepared by Environmental Research & Technology, Inc., October 25, 1984.
- (55) "Request for Issuance of a Request for Response Action to the Reilly Tar and Chemical Corporation Regarding Contamination At and Around the Reilly Tar Hazardous Waste Site in St. Louis Park," by the Minnesota Pollution Control Agency (MPCA Board Item), December 18, 1984.
- (56) "Ground-water Flow in Prairie du Chien Jordan Aquifer Related to Contamination by Coal Tar Derivatives, St. Louis Park, MN," prepared by J. R. Stark and M. F. Hult, United States Geological Survey, 1985.

- (57) "Calgon ACT Study: Initial Results from the Accelerated Column Test of PAH Removal Performance for Activated Carbon Treatment of Water From SLP 15," prepared by Twin City Testing, January 11, 1985.
- (58) "Calgon ACT Study: Further Results From the Study of PAH Removal by Activated Carbon Treatment," prepared by Twin City Testing, January 30, 1985.
- (59) "Reilly Tar and Chemical: Analysis of Water From Three St. Peter Wells," prepared by Twin City Testing, January 31, 1985.
- (60) "Accelerated Column Test for Removal of Polynuclear Aromatic Hydrocarbons from Contaminated Groundwater," prepared by Calgon Corporation, March 8, 1985.
- (61) "PAH Analysis by GCMS," prepared by Twin City Testing March 26, 1985
- (62) "Draft Work Plan R1, Reilly Tar Site, St. Louis Park, Minnesota," prepared by CH₂M Hill and Ecology & Environment, April 27, 1985.
- (63) "Predesign Memorandum Evaluation of Granular Activated Carbon System Alternatives For Removal of Polynuclear Aromatic Hydrocarbons From Municipal Well Water in St. Louis Park, Minnesota", prepared by Ch₂M Hill, May 29, 1985.
- (64) "PAH Threshold Odor Determination in St. Louis Park Municipal Supply Water," prepared by Environmental Research and Technology, Inc., May 30, 1985.
- (65) "Volatile Organic Analysis of the St. Louis Park Municipal Drinking Water Supply System, March, 1985," prepared by Environmental Research & Technology, Inc., May 30, 1985.
- (66) "Feasibility of Community-Wide Epidemiologic Studies of Drinking Water and Health: St. Louis Park and New Brighton", prepared by the Minnesota Department of Health, December 31, 1985.

- (b) Field investigations and chemical analyses of water (surface and/or ground water) and soils, including associated field notes, chain of custody records, raw data sheets, sampling analysis protocols, boring and well logs and water level measurements. In general, the results of soil borings and water samples are found in the list of studies and/or reports under Part C. 13(a). (Dates listed usually reflect the time of the investigation.)
- (1) Preliminary soil investigation for the engineering properties of the soil, performed by Soil Engineering Services, Inc., October 13, 1969.
 - (2) Mellon-Rice data on well water and plant wastewater samples, Carnegie-Mellon University and C.W. Rice Division, NUS, November 5, 1970.
 - (3) Soil sample analyses, Tri-City Public Health Lab, 1971 and 1973.
 - (4) Analysis of soil and water samples from the St. Louis Park area, by the Minnesota Department of Health, 1973 to present.
 - (5) Analysis of soil and water samples by Twin Cities Testing and Engineering Laboratory, Inc., and Soil Exploration Company, 1974 to present.
 - (6) Analysis of soil and water samples by Sanitary Engineering Laboratories, Inc. (SERCO), 1975, 1976, 1977, 1978 and 1982.
 - (7) Soil borings performed by Braun Engineering, 1974, 1979, 1980, and 1982.
 - (8) Well investigations pursuant to well abandonment program performed by Minnesota Department of Health, 1978-present.
 - (9) Analysis of soil and water by United States Geological Survey, 1978-present.



- (10) Analyses of groundwater, by Pace Laboratories, Inc., 1978-1980, 1983-1984 (1983-1984 analyses performed by Rocky Mountain Analytical Laboratory).
- (11) "Results of Analysis of Water Samples, and Soil Samples for Polynuclear Aromatic Compounds (Hydrocarbons, Azarene, Phenols)", by Midwest Research Institute, October 7, 1981.
- (12) Analyses of Ground Water, by Capsule Laboratories, Inc., 1981, 1982, and 1983.
- (13) Soil borings and analyses by GCA Corp., 1982-1983.
- (14) Water analyses by Monsanto Research Corp., 1982-1984.
- (15) Water analyses by Environmental Testing and Certification Corporation, 1983.
- (16) Soil boring and chemical analyses by National Biocentric, Inc., 1976.
- (17) St. Louis Park area water well search and inventory questionnaires, prepared by E. A. Hickok and Associates, Inc., 1982-1983.
- (18) Progress reports on the investigation and clean-out of W23 and W105, E.A. Hickok & Associates, Inc., 1982 to present.
- (19) Water samples and analyses by CH2M Hill, 1982 and 1983.
- (20) Water samples and analyses by Environmental Research and Technology, Inc., 1982 to present.
- (21) Water samples and analyses by Acurex Corporation, 1984 to present.
- (22) Water analyses by United States Environmental Protection Agency 1977 and 1981-1982.

14. The United States, the State, St. Louis Park, Hopkins, Reilly, the Housing & Redevelopment Authority, Oak Park Village Associates and Philip's Investment Co. desire to reach a mutually satisfactory settlement in this action.

15. It is in the public interest, the interest of the Parties and the interest of judicial economy for this case to be resolved without protracted litigation.

D.

DEFINITIONS

Unless otherwise explicitly stated, the definitions provided in CERCLA, 42 U.S.C. § 9601 et seq., shall control the meaning of the terms used in this Consent Decree. As used in this Consent Decree, the following words and phrases shall have these meanings:

1. Additional Carcinogenic PAH: Means compounds not initially included in Appendix A of the Remedial Action Plan (RAP) as a Carcinogenic PAH but which are later determined as Additional Carcinogenic PAH through the procedures set forth below:

a. The Assistant Administrator for Solid Waste and Emergency Response ("Assistant Administrator") of EPA may, upon written notice, inform Reilly, St. Louis Park and the Commissioner of an EPA determination that a PAH compound is a carcinogen and propose such a PAH compound as an Additional Carcinogenic PAH. Such proposal shall set forth the basis and scientific evidence supporting the EPA determination.

b. Within thirty (30) Days of receipt of such notice, Reilly, St. Louis Park or the Commissioner may respond to the proposal by stating, in writing, the reasons why the proposal should be accepted, rejected or modified and within sixty (60) additional Days thereafter may supplement such response in writing. The Assistant Administrator (or his designee), Reilly, St. Louis Park and the Commissioner shall provide the

opportunity to consult with each other during this period or such extension as they agree upon. In any consultation, the EPA shall have present one or more persons who are technically qualified to discuss the basis and scientific evidence supporting the determination and who participated in evaluating the scientific basis of EPA's determination.

c. Any Additional Carcinogenic PAH shall be subject to the Advisory Level and Drinking Water Criterion for Carcinogenic PAH in Section 2.2 in the RAP, unless there is substantial scientific evidence on which to base a separate Advisory Level or Drinking Water Criterion for that substance, either when it is present without any other Carcinogenic PAH or when it is present in a mixture of Carcinogenic PAH.

d. Within sixty (60) Days from the end of the time provided in Part D.1.b., above, the Assistant Administrator shall notify Reilly, St. Louis Park and the Commissioner of the final EPA determination with respect to its proposal to include a PAH compound as an Additional Carcinogenic PAH. Such EPA determination shall be applicable to all aspects of programs related to CERCLA and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq. However, rulemaking shall not be required for such determination.

e. If Reilly, St. Louis Park or the Commissioner disagree with the final determination, any of them may, within twenty (20) Days of receipt of the final determination,

petition the Court for review. On such review, the petitioner shall bear the burden of proof that EPA's final determination is not supported by substantial evidence. Should the Court uphold EPA's determination, the PAH compound shall be deemed to be an Additional Carcinogenic PAH for all purposes of this Consent Decree, and shall be effective in accordance with the final order of the Court. For the purposes of operating any drinking water treatment plant under Sections 4 or 12 of the RAP, the EPA's determination shall, during the pendency of any Court review, be treated as if it had been approved by the Court.

f. If Reilly, St. Louis Park or the Commissioner do not appeal the final determination of the EPA within the time period set forth in Part D.l.e., above, the PAH compound shall be deemed to be an Additional Carcinogenic PAH.

g. Within sixty (60) Days of receipt of the EPA determination, or final order of the Court if the EPA determination is appealed to the Court, Reilly shall submit to the Regional Administrator, the Director and the Commissioner, a plan for accommodating the Additional Carcinogenic PAH into the provisions of the RAP.

h. The Regional Administrator, the Director and the Commissioner shall review the plan in accordance with Part G of the Consent Decree.

2. Advisory Level: Means the concentrations of Carcinogenic PAH, Other PAH or the sum of benzo(a)pyrene and

dibenz(a,h)anthracene as defined in Section 2.2 of the RAP or concentrations of Additional Carcinogenic PAH which may be established under the procedures of Part D.1.

3. And/or: Means, when used in the phrase "Regional Administrator and/or Director", the Regional Administrator or the Director or both.

4. Carcinogenic PAH: Means those PAH compounds listed in Appendix A of the RAP as being suspected human carcinogens and those Additional Carcinogenic PAH compounds added pursuant to Part D.1 of this Consent Decree. For Monitoring purposes, the concentration of Carcinogenic PAH shall be the sum of the concentrations of all compounds listed in Parts A.1.1. and A.2. of Appendix A of the RAP.

5. Chemical Substances: Means

- (a) The following items to the extent used, produced or stored by Reilly at or on the Site: coal tar, including horizontal and vertical retort tar; water gas and oil gas tar; creosote, other coal tar distillates, coal tar pitch, coke, and refined tars; wood and the constituents of wood; pentachlorophenol; zinc chloride; Arban; sulfuric acid; paint; fuel oil; petroleum distillate; salt; grease; benzene; boiler treatment chemicals; sodium hydroxide; maintenance substances including but not limited to solvents and degreasers; xylene and toluene as laboratory reagents;

sewage; bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote, pentachlorophenol, and other wood treating substances; wastewaters from the refining and processing of coal tar products; and solid wastes from the refining and processing of coal tar products; and

(b) asphalt originating from the asphalt plant located on the portion of the Site leased from Reilly; and

(c) PAH, Phenolics and other chemical constituents of the products, materials and substances set forth in Part D.4. (a) and (b) above; and

(d) quinone, total chlorine residuals, zinc, cadmium, copper, nickel, lead and ammonia;

only to the extent that each item listed in Part D.4. (a) through (d) above are Known To a Party.

6. Commissioner: Means the Commissioner of the Minnesota Department of Health, or his/her authorized representative.

7. Contamination or Contaminants: Means PAH and Phenolics resulting from activities of Reilly at the Site when found in the ground water or the soil.

8. Day: When used in the Consent Decree to indicate a deadline for a required action, means a calendar day. Whenever a submittal or action required by the Consent Decree falls on a Saturday, Sunday or Federal or Minnesota State legal holiday, the submittal or action shall be due upon the next following day of business.

9. Director: Means the Executive Director of the Minnesota Pollution Control Agency, or his/her authorized representative.
10. Drinking Water Criteria: Means concentrations of Carcinogenic PAH, Other PAH or the sum of benzo(a)pyrene and dibenz(a,h)anthracene as defined in Section 2.2 of the RAP or concentrations of Additional Carcinogenic PAH which may be established under the procedures in Part D.1.
11. Effective Date: Means the effective date of the Consent Decree.
12. EPA: Means the United States Environmental Protection Agency.
13. HRA: Means the Housing and Redevelopment Authority of St. Louis Park.
14. Information Known To a Party or Known To a Party or Known To or Known: Means data and other information identified and discussed in (1) the chemical analyses, documents, studies and investigations enumerated in Part C.13.; (2) any documents, studies or investigations in the possession of a Party or of which a Party was aware on or before the Effective Date; (3) any written assessments, reports, memoranda or other written documents prepared by or for a Party, on or before the Effective Date; (4) discovery responses, including deposition testimony, interrogatory answers and responses to requests for admissions in this case or in the Hennepin County Lawsuit; (5) documents produced by or to that Party in this case or in

the Hennepin County Lawsuit; and (6) pleadings and all other documents lodged with the Courts in this case or in the Hennepin County Lawsuit.

The term "a Party" as used in this definition refers specifically to the Party to whom knowledge is attributed and has the meaning given it in Part B, except that (a) when referring to the United States, the term "Party", as used in this definition only, means the U.S. Environmental Protection Agency, the Department of Interior, and the Land and Natural Resources Division of the U.S. Department of Justice; and (b) when referring to the State, the term "Party", as used in this definition only, means the Minnesota Pollution Control Agency, the Minnesota Department of Health, the Minnesota Department of Natural Resources and the staff of the Minnesota Attorney General's Office assigned to these agencies.

15. MDH: Means the Minnesota Department of Health.

16. MWCC: Means the Metropolitan Waste Control Commission.

17. Monitor: Means to collect a sample and analyze for Carcinogenic PAH and Other PAH, as well as for any other parameters specified, in accordance with the sampling and analytical plans required under Section 3 of the RAP.

18. MPCA: Means the Minnesota Pollution Control Agency.

19. Other Law: Means, when used in Parts G, H, I, M, N and Q, CERCLA, RCRA, Minnesota Statutes Chapters 115, 115B and 116.

This definition does not apply to Part T.

20. Other PAH: Means PAH compounds other than those which are listed in Appendix A to the RAP as suspected human carcinogens. For Monitoring purposes, the concentration of Other PAH is defined as the sum of the concentrations of all compounds listed in Part A.1.2. of Appendix A.

21. PAH (polynuclear aromatic hydrocarbons): Means chemical compounds consisting of carbon and hydrogen atoms contained in two or more fused aromatic rings, with each ring consisting of five or six carbon atoms. This term also includes alkyl-substituted, aryl-substituted and heterocyclic PAH (compounds in which one or more carbon atoms in a ring are replaced with nitrogen, oxygen, and/or sulfur atoms). This term also includes biphenyl and alkylated biphenyls.

22. Phenolics: Means aromatic organic compounds substituted with one or more hydroxyl groups, which are detected by the 4-aminoantiprene method, EPA method 420.1 or 420.2, or other method as approved by the Regional Administrator and the Director in accordance with Part G or H.

23. Regional Administrator: Means the Regional Administrator of the EPA Region in which the Site is located (currently Region V), or his/her authorized representative.

24. Site: Means the Republic Creosote site in St. Louis Park, operated by the Reilly Tar & Chemical Corporation from 1917 to 1972, which consists of the property identified in Part C.1. The Site is bounded by an imaginary line extending south from

the terminus of Pennsylvania Avenue south of 31st Street on the west; an imaginary line extending westward from the intersection of Louisiana Avenue and 32nd Street on the north; Louisiana Avenue from 32nd Street to Gorham Street, Gorham Street from Louisiana Avenue to 2nd Street NW, 2nd Street NW from Gorham Street to Republic Avenue, Republic Avenue from 2nd Street NW to 1st Street NW, and 1st Street NW from Republic Avenue to Walker Street on the east; and Walker Street on the south.

25. Standard Deviation: Means the measure of statistical variability calculated from the equation

$$S = \left[\frac{\sum_{i=1}^n (X_i - \bar{X})^2}{n - 1} \right]^{1/2}$$

Where S is the calculated standard deviation;

n is the number of samples;

X_i is the value of the i'th sample; and

\bar{X} is the arithmetic mean of the values of all samples.

26. Total PAH: The sum of the concentrations of all Carcinogenic PAH and Other PAH listed in Parts A.1.1., A.1.2., and, if detected, Part A.2. of Appendix A to the RAP.

E.

PURPOSES OF CONSENT DECREE

The purposes of this Consent Decree are to avoid prolonged litigation; to permit expeditious implementation of

the activities described herein; to protect the public health and welfare and the environment from the risks alleged to arise from releases and threatened releases of hazardous and other Chemical Substances at, on or from the Site; and to provide for implementation, if necessary, of future contingent actions which are reasonably foreseeable possibilities but whose precise need cannot be determined from present information.

Entry into this Consent Decree does not constitute, and shall not be construed as, any admission of liability, wrongdoing, violation of law or fault on the part of any Party hereto. It is further understood and agreed that liability, wrongdoing, violation of law and fault are in all respects specifically denied by Reilly and any other Party hereto, that any actions taken or any payments by Reilly or any other Party hereto under the provisions of this Consent Decree are made only for the purpose of compromise and avoidance of the expense of litigation, and that this Consent Decree shall not constitute or be construed as an adjudication or finding on the merits of any liability, fault, violation of law or any other wrongful conduct or practice on the part of Reilly or any other Party.

The Parties agree that they shall not use this Consent Decree as evidence of Reilly's or St. Louis Park's liability or Reilly's consent to the appropriateness of the remedy described in Part F below in any other judicial or administrative

proceeding involving Reilly or St. Louis Park, except any judicial or administrative proceeding relating to the implementation or enforcement of this Consent Decree.

F.

REMEDIAL ACTION PLAN

This Consent Decree contains a program designed to protect the public health and welfare and the environment from the Known releases, or threatened releases, of Chemical Substances at, on or from the Site, and includes contingent measures, the need for which cannot be determined from present information but is a reasonably foreseeable possibility. This program is set forth in Exhibit A to this Consent Decree, and is titled and constitutes the Remedial Action Plan ("RAP"). Exhibit A is made an integral and enforceable part of this Consent Decree. The term "Consent Decree" shall include the RAP whenever used in this document.

Except where performance by another Party is expressly provided in the RAP, Reilly hereby commits to implement the requirements of the RAP.

G.

REVIEW OF SUBMITTALS

1. Plans or reports, except progress reports required by Part K, submitted by Reilly, its employees, contractors or assigns, pursuant to this Consent Decree shall be subject to the approval of both the Regional Administrator and the Director.

2. The Regional Administrator and the Director shall review and confer on all submittals made by Reilly within thirty (30) Days of receipt and, by the thirtieth Day, shall notify Reilly of their approval, modification or disapproval of the submittal. Either the Regional Administrator or the Director may, upon written notice to Reilly, extend the date for response hereunder by an additional thirty (30) Days.

3. The United States, the State and Reilly shall provide the opportunity to consult with each other during the review of submittals or modifications.

4. United States and State Concur As to Submittal

a. The Regional Administrator and the Director shall provide Reilly a single letter with their signatures whenever the response of both is required and the Regional Administrator and Director concur as to approval, or disapproval and modifications. If such letter approves the submittal in its entirety as made, the submittal shall become an integral and enforceable part of the Consent Decree.

b. In the event that the Regional Administrator and the Director concur in disapproving the submittal in whole or in part, the letter shall specify the inadequacies and the necessary modifications.

c. Within twenty (20) Days of the date of receipt by Reilly of any single notice of disapproval and

modifications under Part G.4.b., Reilly shall (1) submit the required modifications or (2) state in writing the reasons why the submittal, as originally submitted, should be approved.

d. If within fourteen (14) Days from receipt of the response under Part G.4.c. above the Parties have not reconciled all issues in disagreement, and the Regional Administrator and the Director concur, they shall propose modifications to the submittal to Reilly as they deem necessary by means of a single letter with their signatures.

e. If Reilly disagrees with the proposed modifications under Part G.4.d., it may, within twenty (20) Days of receipt thereof, petition the Court for review of the dispute.

f. In any review by the Court of a dispute related to RAP submittals under Part G.4.e., Reilly shall have the burden of showing that its submittal better meets the purposes and requirements of this Consent Decree and the National Contingency Plan (40 C.F.R. Part 300) than does the Regional Administrator's and Director's proposed modification. During the period dispute resolution is before the Court, the time schedules and obligations imposed on Reilly by this Consent Decree with respect to the matter in dispute shall be suspended, provided however, the Court may award payments for failure to perform under

Part M hereof or Other Law if it finds that the dispute was not brought in good faith.

g. If Reilly elects not to request Court review under Part G.4.e., the proposed modifications under Part G.4.d. shall become an integral part of this Consent Decree and binding upon the Parties.

5. United States and State Do Not Concur

a. In the event the Regional Administrator and Director do not concur as to the approval, modification or disapproval of the submittal either after initial consultation under Part G.2. or consultation under Part G.4.d., each shall provide Reilly a response describing its approval, modification or disapproval within the applicable time requirements specified in Part G.2. or Part G.4.d.

b. Any Party may, thereafter, proceed in accordance with the dispute resolution provisions of Part I.

6. United States and/or State Fail to Notify Reilly

If the Regional Administrator and/or the Director fail to notify Reilly under any provision of this Part G, Reilly may proceed in accordance with the dispute resolution provisions of Part I.

7. Effect of Failure to Concur or Failure to Notify

If the Regional Administrator and the Director do not concur in any response required under this Part G or if either or both fail to notify Reilly as required under this Part G,

such failure to concur or failure to notify shall not be deemed an approval. However, with respect to the matter for which a failure to concur between the Regional Administrator and Director exists or no notice was given, during the pendency of the resulting delay and until Reilly receives notice that the Regional Administrator and Director concur or until Reilly receives the delinquent notice(s), whichever is later, (a) no payments under Part M or Other Law shall accrue or be payable for failure to perform the matter for which a failure to concur between the Regional Administrator and Director exists or no notice was given; and (b) the time schedules and performance obligations related to said matter shall be suspended.

8. To the extent that submittals are required by the Consent Decree to be submitted to both the Commissioner and the Director, the procedures for review by the Director provided in this Part G shall also apply to review by the Commissioner. Whenever both are required to review a submittal, the Director and the Commissioner shall coordinate their reviews and responses and, consistent with the requirements of this Part G, they shall make a joint statement specifying their respective responses.

9. Whenever submittals are made solely to the Commissioner, the review of the Commissioner shall proceed in accordance with this Part G; except that nothing in this Part G shall create any obligation upon the Commissioner to consult with the Regional Administrator or the Director.

10. Where the RAP calls for submittals to be made to the Regional Administrator or Director by a Party other than Reilly, the procedures in this Part G shall apply to that Party as if it were Reilly.

H.

OTHER DETERMINATIONS BY THE REGIONAL ADMINISTRATOR
AND DIRECTOR

Except as to decisions under Parts M, N and BB, the following provisions shall apply to decisions made by the Regional Administrator and/or Director under the terms of this Consent Decree that are not in response to a submittal made by Reilly or another Party:

1. The Regional Administrator and the Director shall confer on all decisions required under the terms of the Consent Decree not in response to a submittal made by Reilly, and shall notify Reilly of their decision as described herein.

2. The Regional Administrator, the Director and Reilly shall provide the opportunity to consult with each other during the decisionmaking process.

3. United States and State Concur As to Decision

a. The Regional Administrator and the Director shall provide Reilly a single letter with their signatures whenever decision of both is required and the Regional Administrator and Director concur as to the decision.

b. Within twenty (20) Days of the date of receipt by Reilly of any single notice of decision, pursuant to Part H.3.a., Reilly may respond to the decision by stating in writing the reasons why the decision should be modified.

c. If within fourteen (14) Days from the receipt of Reilly's response under Part H.3.b. above the Parties have not reconciled all issues in disagreement, and the Regional Administrator and Director concur, they shall submit notice of any modifications or notice of no modifications to the decision to Reilly by means of a single letter with their signatures.

d. If Reilly disagrees with the decision or any modifications under Part H.3.c., it may, within twenty (20) Days of receipt of notice under Part H.3.c., petition the Court for review of the dispute.

e. In any review by the Court of a dispute related to decisions of the Regional Administrator and Director under Part H.3.d., Reilly shall have the burden of showing that their decision does not meet the purposes and requirements of this Consent Decree and is inconsistent with the National Contingency Plan (40 C.R.F. Part 300). During the period dispute resolution is before the Court, the time schedules and obligations imposed on Reilly by this Consent Decree with respect to the matter in dispute shall be suspended, provided however, the Court may award payments for failure to perform under Part M hereof or Other Law if it finds that the dispute was not brought in good faith.

f. If Reilly elects not to request Court review under Part H.3.d., the decision and any modifications shall become an integral part of this Consent Decree and binding upon the Parties.

4. United States and State Do Not Concur

a. In the event the Regional Administrator and Director do not concur as to the decision either after initial consultation under Part H.1. or consultation under Part H.3.c., each shall provide Reilly a letter describing its decision within the applicable time requirements specified in Part H.

b. Any Party may, thereafter, proceed in accordance with the dispute resolution provisions of Part I.

5. United States and/or State Fail to Notify Reilly

If the Regional Administrator and/or the Director fail to notify Reilly under any provision of this Part H, Reilly may proceed in accordance with the dispute resolution provisions of Part I.

6. Effect of Failure to Concur or Failure to Notify

If the Regional Administrator and the Director do not concur on any decision or modification required under this Part H or if either or both fail to notify Reilly as required under this Part H, such failure to concur or failure to notify shall not be authorization to proceed. However, with respect to the matter for which a failure to concur between the Regional Administrator and Director exists or no notice was given,

during the pendency of the resulting delay and until Reilly receives notice that the Regional Administrator and Director concur or until Reilly receives the delinquent notice(s), whichever is later, (a) no payments under Part M or Other Law shall accrue or be payable for failure to perform the matter for which a failure to concur between the Regional Administrator and Director exists or no notice was given; and (b) the time schedules and performance obligations related to said matter shall be suspended.

7. To the extent that decisions are to be made by both the Commissioner and the Director, the procedures for decisions by the Director provided in this Part H shall also apply to decisions by the Commissioner. Whenever both are required to make the decision, the Director and the Commissioner shall coordinate their decision making and, consistent with the requirements of this Part H, they shall make a joint statement specifying their respective decisions.

8. Whenever decisions are made solely by the Commissioner, the decision of the Commissioner shall proceed in accordance with this Part H; except that nothing in this Part H shall create any obligation upon the Commissioner to consult with the Regional Administrator or the Director.

I.

RESOLUTION OF DISPUTES

This Part I establishes the procedures for resolving disputes which may arise under this Consent Decree, including

the Exhibits to this Consent Decree, but does not establish procedures for resolving disputes which arise under Part D.1. (Additional Carcinogenic PAH); Part G.4. (Review of Submittals); Part H.3. (Other Determinations of the Regional Administrator and Director); Part M (Payment upon Failure to Perform); Part N (Delay of Performance and Extensions of Schedules); Part Z (Financial Responsibility); and Part BB (Duration of Consent Decree).

A dispute arises when one Party notifies the other Parties in writing that a dispute exists with respect to the meaning, application, interpretation, amendment or modification of this Consent Decree, or with respect to any Party's compliance herewith, or with respect to the review of submittals or resubmittals as provided in Part G (except G.4.) or with respect to decisions or modification of decisions as provided in Part H (except H.3:). A dispute shall in the first instance be the subject of informal negotiations within no more than thirty (30) Days of receipt of said notice that a dispute exists. This period for negotiations may be extended by mutual agreement among the Parties to the dispute.

If the Parties cannot resolve the dispute, any Party may petition the Court for appropriate resolution upon written notice to all other Parties. No payments for failure to perform under Part M hereof or Other Law shall accrue with respect to issues in dispute during the time period of the

informal negotiations unless the Court finds that invocation of the resolution of dispute provision was not in good faith. During the resolution of any dispute Reilly shall continue to implement all portions of the RAP which can be reasonably implemented while the matter in dispute is under consideration.

During the period dispute resolution is before the Court, except in disputes between Reilly and St. Louis Park under Exhibit B, the time schedules and obligations imposed on Reilly by this Consent Decree with respect to the matter in dispute shall be suspended, provided however, the Court may award payments for failure to perform under Part M hereof or Other Law if it finds that the dispute was not brought in good faith.

J.

CREATION OF DANGER

In the event the EPA On-Scene Coordinator (Project Leader), the MPCA Project Leader, or Reilly's Project Leader determines that activities implementing or in non-compliance with this Consent Decree, or any other circumstances or activities relating to the Site, may create or contribute to a threat to the health or welfare of the people on the Site or in the surrounding area or to the environment, the EPA On-Scene Coordinator, the MPCA Project Leader, or Reilly's Project Leader may stop or may order Reilly to stop further implementation of this Consent Decree, or portions thereof, for

such period of time as is needed to abate the danger. If implementation of this Consent Decree is stopped by any person authorized to do so under this Part, that person shall immediately notify all other Project Leaders of the stoppage and reasons therefor. During any stoppage of implementation of the Consent Decree pursuant to this Part J, the Regional Administrator and the Director, in accordance with Part N, shall extend the time schedules and obligations imposed on Reilly by this Consent Decree as the circumstances of endangerment require, except where the endangerment is the consequence of negligent or willful actions by Reilly, its contractors or assigns. Any dispute concerning Reilly's stoppage of work under this Part shall be resolved in accordance with Part N.3 with Reilly bearing the burden of proof that the endangerment was not a consequence of negligent or willful actions by Reilly, its contractors or assigns.

K.

REPORTING

Reilly shall submit written progress reports to the Regional Administrator and the Director which describe the actions it has taken during the previous calendar quarter in implementation of the requirements of this Consent Decree. Such written progress reports shall also describe the activities scheduled to be taken during the upcoming reporting period. The progress reports shall be submitted by the tenth

Day of the first month of each calendar quarter following the Effective Date for the first year.

Thereafter, progress reports shall be submitted on an annual basis by March 15 of each year. The progress reports shall include a detailed statement of the manner and extent to which the procedures and dates set forth in the Consent Decree are being met. In addition, the progress reports shall include copies of all analytical data sheets relating to the subjects of this Consent Decree received during the previous reporting period.

The Regional Administrator and the Director may direct in writing that reports be submitted at different intervals, but no more frequently than quarterly, or that no further reports need be submitted.

L.

NOTICES

Whenever, under the terms of the Consent Decree, notice is required to be given or a report or other document is required to be forwarded by one Party to another, it shall be directed to the individuals, at the addresses specified below, by certified mail or equivalent receipt, unless those individuals or their successors give notice in writing to the other Parties of another individual designated to receive such communications. Except as provided in Section 11.3 of the RAP, notice to the individuals listed below shall constitute

complete satisfaction of any notice requirement of the Consent Decree with respect to the United States, including the Regional Administrator and EPA On-Scene Coordinator; the State, including the Director, the MPCA Project Leader, and the Commissioner; St. Louis Park; and Reilly; including their respective Project Leaders; and Hopkins; the Housing and Redevelopment Authority of St. Louis Park; Oak Park Village Associates; and Philip's Investment Co.:

Director, Waste Management Division
U.S. EPA, Region V
Attn: Hazardous Waste Enforcement Branch
230 So. Dearborn Street
Chicago, Illinois 60604

Commissioner
Minnesota Department of Health
717 Delaware Street S.E.
Minneapolis, Minnesota 55440

Director, Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
Attn: Site Response Section
1935 West County Road B-2
Roseville, Minnesota 55113

City Manager
City of St. Louis Park
5005 Minnetonka Boulevard
St. Louis Park, Minnesota 55416

City Manager
City of Hopkins
1010 South 1st Street
Hopkins, Minnesota 55343

President
Reilly Tar & Chemical Corporation
1510 Market Square Center
151 North Delaware Street
Indianapolis, Indiana 46204

Executive Director
The Housing and Redevelopment
Authority of St. Louis Park
5005 Minnetonka Boulevard
St. Louis Park, Minnesota 55416

Oak Park Village Associates
Diversified Equities Corporation
114 5th Street S.E.
Minneapolis, Minnesota 55414
Attn: Mr. Jon Dickerson

Philip's Investment Co.
3401 Louisiana Avenue South
St. Louis Park, Minnesota 55426

Whenever any Party petitions the Court pursuant to any Part of this Consent Decree, it shall also notify the following officials at their then current addresses: Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice (present address: 10th & Pennsylvania Avenue, N.W., Washington D.C. 20530), United States Attorney for the District of Minnesota (present address: 234 Federal Courthouse, 110 S. Fourth Street, Minneapolis, Minnesota 55401) and Attorney General, State of Minnesota (present address: 102 State Capitol, St. Paul, Minnesota 55155).

M.

PAYMENTS UPON FAILURE TO PERFORM

This Part M establishes the procedures and standards for requiring Reilly (1) to make payments to the United States and/or the State for failure to make timely submittals under this Consent Decree and (2) to make payments to the United States for all other failures to comply with this Consent

Decree. For such "other failures", the State reserves the authority to petition this Court for civil penalties against Reilly under Other Law.

1. Failure to Make Timely Submittals

a. Upon determination by the Regional Administrator and/or the Director that Reilly has failed to make a submittal in accordance with the time schedules which are contained in the Consent Decree or are subsequently developed or allowed under this Consent Decree, the Regional Administrator and/or the Director shall promptly give written notice to Reilly of such failure, specifying the provisions of the Consent Decree which are the bases for the determination. The Regional Administrator and/or the Director shall provide Reilly at Reilly's request, an opportunity within fifteen (15) Days of Reilly's receipt of the notice to explain why the noncompliance upon which the payment is based should be excused. Unless excused by the Regional Administrator, Reilly shall pay into the Hazardous Substance Response Trust Fund, within 30 Days of receipt of such notice from the Regional Administrator, \$500 per day for each of the first 30 days of lateness and \$1,500 per day for each day of lateness after the thirtieth day. Unless excused by the Director, Reilly shall pay into the Environmental Response, Compensation and Compliance Fund of the Treasury of the

State of Minnesota, within 30 Days of receipt of such notice from the Director, \$500 per day for each of the first 30 days of lateness and \$1,500 per day for each day of lateness after the thirtieth day. All payments begin to accrue from the date on which the submittal was to have been made. All payments under this paragraph shall cease to accrue upon the submission of the required submittal to the Regional Administrator and the Director.

b. Reilly may dispute the determination that a submittal has not been made in a timely fashion by petitioning this Court within 30 Days after receipt of notice under Part M.1.a. The filing of a petition by Reilly shall stay the obligation to make payment within 30 Days of receipt of notice as provided in Part M.1.a., above, but shall not toll the running of payments from the first date of noncompliance. The filing of a petition by Reilly shall not alter in any other way Reilly's obligations under this Consent Decree.

c. Nothing in this Part M.1. shall be construed as prohibiting or in any way limiting the ability of the United States to elect to seek civil penalties under RCRA or CERCLA in lieu of the payments provided under this Part M.1. Nothing in this Part M.1. shall be construed as prohibiting or in any way limiting the ability of the State to seek civil penalties for any noncompliance with this

Consent Decree, other than noncompliance with the schedules for making submittals to which this Part M.1. applies.

2. All Other Failures: United States Options

a. Upon determination by the Regional Administrator that Reilly has failed to implement any requirements of this Consent Decree or any requirements which are subsequently developed or altered under this Consent Decree, the Regional Administrator shall promptly give written notice to Reilly of such failure, specifying the provisions of the Consent Decree which are the bases for the determination. The Regional Administrator shall provide Reilly an opportunity, at Reilly's request, within fifteen (15) Days of Reilly's receipt of the notice to explain why the noncompliance upon which the payment is based should be excused. Unless excused, Reilly shall pay into the Hazardous Substance Response Trust Fund, within 30 Days of receipt of such notice, \$750 for each of the first thirty days of failure and \$1,500 for each day of failure after the first thirty days. The payments begin to accrue from the first date of failure. Payments under this Part M.2.a. shall cease to accrue upon the curing of the failure.

b. Reilly may dispute the determination that it has failed to implement the requirements of this Consent Decree or any requirements which are subsequently developed or altered under this Consent Decree by petitioning the

Court within 30 Days after receipt of notice under Part M.2.a. The filing of a petition by Reilly shall stay the obligation to make payment within 30 Days of receipt of notice as provided in Part M.2.a., above, but shall not toll the running of payments from the first date of failure. The filing of a petition by Reilly shall not alter in any other way Reilly's obligations under this Consent Decree.

c. Nothing in this Part M.2. shall be construed as prohibiting or in any way limiting the ability of the United States to elect to seek civil penalties under RCRA or CERCLA in lieu of the payments provided under this Part M.2.

3. General Provisions

a. In any Court review of payments assessed under this Part M, Reilly shall not assert as a defense the invalidity of Part M.

b. Any payment made under this Part M shall not be tax deductible.

c. This Part M does not limit the Court's authority to use its equitable and inherent powers to achieve the purposes of this Consent Decree.

d. Reilly shall be excused from paying amounts under this Part M or Other Law for failure to meet interim deadlines if it meets a final completion date for the work

specified in the RAP or in any work plan approved in accordance with the RAP for which the payment was assessed. This excuse does not apply to open ended obligations in the RAP (e.g., gradient control well operations or operation of drinking water treatment) for which a completion date is not specified in the RAP or in any approved work plan. Where Reilly anticipates being excused under this Part M.3.d., it shall so notify the Regional Administrator and Director and no payment need be made until Reilly is directed to pay by the Regional Administrator and/or the Director.

e. Reilly's obligations to implement this Consent Decree shall not be suspended on account of the pendency of a dispute concerning the assessment of payments for failure to perform under Part M or Other Law.

f. The Regional Administrator and/or Director shall excuse payments in accordance with Parts N.3. and N.4. Court review of the decision of the Regional Administrator and/or Director to excuse payments shall be in accordance with Part N.3. The Regional Administrator and/or Director may exercise such nonreviewable discretion pursuant to Part N.4 as they deem appropriate.

N.

DELAY OF PERFORMANCE AND EXTENSIONS OF SCHEDULES

This Part N establishes the procedures and standards for granting extensions of schedules ("extension") and excusing

delay in performance obligations ("excuse") required under this Consent Decree.

1. In order to obtain an extension or excuse pursuant to Part N.3 or N.4, Reilly shall submit a request in writing to the Regional Administrator and the Director. Each request shall be submitted no later than three (3) business days after discovery of the need for an excuse or an extension. Each request shall specify (a) the reason(s) therefor; (b) the date(s) for which the extension or excuse is sought (with direct reference to the relevant portions of the Consent Decree); (c) the length of time of the requested excuse or extension; (d) measures taken or to be taken by Reilly to avoid or minimize the need for the excuse or extension. A request for an extension shall not be required for extensions which are provided for in Parts G, H, I or J above.

2. The Regional Administrator and the Director shall review Reilly's request for an extension or excuse and shall confer with each other prior to responding to the request. The Regional Administrator and Director shall provide Reilly with written notices informing Reilly that they have conferred and of their decisions regarding the request. Such notices shall be mailed to Reilly no later than ten Days following receipt of the request. Failure by either the Regional Administrator or the Director to mail the required notice within this time period does not result in an automatic approval of the

requested extension or excuse of delay. However, if Reilly has received no notice of disapproval from either the Regional Administrator or Director within this period, for such period of time until Reilly receives a disapproval from either the Regional Administrator or the Director, such failure to notify does toll the accumulation of any payments under Part M or Other Law for failure to timely perform the requirements of the Consent Decree for the period of time until a notice of disapproval is received.

3. If Reilly submits a timely request pursuant to Part N.1. for an excuse or extension for a cause beyond Reilly's control, the Regional Administrator and the Director shall each approve the request for an excuse or extension for such period of time as they each determine is attributable to a cause beyond Reilly's control. If the Regional Administrator and Director approve excuses or extensions of different duration, the shorter shall apply. If an excuse or extension is approved, no payments which may have accrued for failure to perform under Part M or Other Law shall be payable, except for such payments which may have accrued between the date a timely request should have been made and the date the request was actually made. Reilly may appeal directly to the Court within 30 Days of receipt of any refusal to grant a requested extension or excuse under this Part N.3. and if the Court finds that the cause is beyond Reilly's control, no payments which

may have accrued under Part M or Other Law for failure to timely perform the requirements of the Consent Decree shall be payable, except for such payments which may have accrued between the date a timely request should have been made and the date the request was actually made. Reilly shall bear the burden of proof in any dispute that its request was based upon causes beyond its control. A failure to timely perform any requirement of this Consent Decree shall not be excused solely on the basis that such performance would be more costly than had been anticipated. Reilly shall not be entitled to an extension or excuse simply because weather conditions are more severe at the work site than anticipated; however, Reilly shall be entitled to an extension or excuse pursuant to this Part N.3. if Reilly can demonstrate that weather conditions at the work site are so severe as to prevent performance of the work without extreme and unreasonable difficulty.

4. Any other requested extension or excuse may be granted in the discretion of the Regional Administrator and the Director if the request is submitted in a timely fashion and they determine that good cause exists for granting the extension or excuse. There shall be no court review of the decisions of the Regional Administrator and the Director regarding requests for an extension or excuse made under this Part N.4.

O.

PROJECT LEADERS

Reilly, St. Louis Park, the EPA, and the MPCA shall each designate a Project Leader and an alternate for the purposes of overseeing the implementation of this Consent Decree, and shall notify the other Parties in writing as to the designation of its Project Leader and alternate within twenty (20) Days of the Effective Date. Any Party may change its designated Project Leader and alternate by notifying the other Parties, in writing, of the change.

To the maximum extent possible, communications among the Parties concerning the implementation of this Consent Decree shall be made through the Project Leaders. Each Project Leader shall be responsible for assuring that all communications from the other Project Leaders are appropriately disseminated to the Party it represents.

The Project Leaders and alternates shall have at least the authority to (1) take samples or direct that samples be taken; (2) observe, take photographs and make such other reports on the progress of the work as the Project Leader or alternate deems appropriate; (3) review records, files and documents relevant to the RAP; and (4) make or authorize minor field modifications in the RAP or in techniques, procedures or designs utilized in carrying out the RAP which are necessary to the completion of the project. All field modifications must be

approved orally by both the EPA and MPCA Project Leaders before they can become effective. Representations regarding field modifications by either the EPA or MPCA Project Leaders as to the approval or disapproval by the other may be relied upon by Reilly. Within forty-eight (48) hours following the modification, the Project Leader who requested the modification shall prepare a memorandum detailing the modification and shall provide or mail a copy of the memorandum to the other Project Leaders.

The EPA Project Leader under this Part is the On-Scene Coordinator and shall have the authority vested by the National Contingency Plan (40 C.F.R. Part 300).

P.

ACCESS

1. Reilly shall, within sixty (60) Days of the Effective Date, use its best efforts to provide the Regional Administrator and Director with copies of access agreements for the Site and all other property upon which monitoring wells, multi-aquifer wells, pumping wells (which include gradient control wells and source control wells) or treatment facilities required by this Consent Decree will be located, except where access agreements relating to this Consent Decree have been obtained by another Party on the Effective Date and to the extent that such locations have been established. For monitoring wells, multi-aquifer wells, pumping wells or

treatment facilities whose location is determined more than sixty (60) Days after the Effective Date, Reilly shall provide access agreements in accordance with this Part P.1. within sixty (60) Days after the location is determined. Reilly shall not be required to pay any fee solely for access as part of its best effort to obtain access prior to invoking the assistance of the MPCA and the MDH. Reilly shall be responsible for restoring any property to which access has been granted to substantially its original condition. The access agreements shall provide authority for Reilly and its assigns, the EPA, the MDH and MPCA or their authorized employees, agents or representatives to enter the Site and all other property upon which monitoring wells, multi-aquifer wells, pumping wells, or treatment facilities will be located at all reasonable times for the purposes of: implementing the RAP; reviewing the progress of implementation of the RAP; conducting such tests as the Regional Administrator, the Director, the Commissioner or their Project Leaders or Reilly's Project Leader or St. Louis Park's Project Leader deem necessary; and verifying data submitted.

With respect to property upon which monitoring wells, pumping wells, or treatment facilities are located, the access agreement shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provision for the continued operation of

the monitoring wells, pumping wells or treatment facilities installed on the property pursuant to this Consent Decree. The access agreements shall also provide that the owners of either the Site or of any property where monitoring wells, pumping wells or treatment facilities are located shall notify Reilly, the Regional Administrator, the Director, the Commissioner, and St. Louis Park by certified mail, prior to any conveyance of the property owners' intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, pumping well(s) or treatment facilities installed pursuant to the RAP. No such conveyance shall occur for at least thirty (30) Days after receipt of such notice.

Where access agreements have been obtained by another Party on the Effective Date, that Party shall assure that the access agreement contains the authority provided for in this Part P and shall provide a copy of the access agreement to Reilly, the Regional Administrator, the Director and the Commissioner within sixty (60) Days of the Effective Date.

If Reilly is unable to obtain access using its best efforts, the MPCA and the MDH agree to use their authority under the statutes and regulations they administer to assist Reilly, its contractors, employees, or assigns in obtaining access to property necessary for the implementation of this Consent Decree. If Reilly, its contractors, employees, agents

or assigns shall be designated agents of the State such designation shall be for the sole purpose of obtaining access to property for purposes of taking investigative or response actions necessary for the implementation of this Consent Decree. In the event of such designation, Reilly and its assigns shall indemnify and save and hold the State, its agents, and employees harmless from any and all claims or causes of actions arising from or on account of the performance of such investigative or response actions by Reilly, its contractors, employees, agents or assigns.

2. Certain activities undertaken to implement the RAP may require access to the property(s) of St. Louis Park, Hopkins, the Housing and Redevelopment Authority of St. Louis Park, Oak Park Village Associates and/or Philip's Investment Co. These Parties hereby agree to grant the other Parties reasonable access to and use of their properties for purposes of implementation and oversight of the RAP without compensation therefor, except that Oak Park Village Associates and Philip's Investment Co. only grant access for the following activities:

- a. Taking soil borings;
- b. Investigation of existing wells; except well W59 located on the property of Philip's Investment Co.;
- c. Installation of monitoring wells, appurtenant piping, necessary utilities, and protective fencing or posts;
- d. Installation of pumping wells, appurtenant disposal lines, necessary utilities and protective fencing or posts;

- e. Operation, maintenance and sample collection from any such wells;
- f. Removal and closure of any such borings and wells, and restoration of their sites.

In the event that access is required to any of the properties above-named, Reilly shall provide the owner reasonable advance notice and opportunity for consultation. Consistent with the purposes for which access is needed, Reilly shall make best efforts to minimize disruption to current use and enjoyment of the property. Disputes between Reilly and the property owner concerning access shall be subject to dispute resolution under Part I.

If it is necessary in order to implement the RAP to perform other activities on the property of Oak Park Village Associates or Philip's Investment Co. which would cause greater interference with the use and enjoyment of these properties, Reilly shall negotiate with the owner as required under Part P.1. above. If Reilly is unable to obtain access using its best efforts, the United States or the State may petition this Court, or use administrative procedures, to obtain supplemental access, including access to well W59 located on the property of Philip's Investment Co., to allow performance of these activities on the property of Oak Park Village Associates or Philip's Investment Co. Nothing in this Consent Decree, including Part U, shall be construed to prevent such a

petition, or administrative process, for supplemental access or to prevent any Party from seeking in the appropriate forum, damages, contribution, indemnification or other relief, except any fee solely for access, to the extent permitted by law, from any other Party in connection with activities conducted pursuant to any supplemental access.

This Part P.2. does not relieve Reilly of any of its responsibilities under the Consent Decree to perform any activities which it may be required to carry out on the properties of Oak Park Village Associates or Philip's Investment Co., nor does it create any rights in Oak Park Village Associates or Philip's Investment Co. for damages, contribution, indemnification or other relief, including any fee solely for access, which they would not otherwise have under law.

Q.

REILLY AGREEMENT WITH ST. LOUIS PARK

Attached to this Consent Decree as Exhibit B, is an agreement between Reilly and St. Louis Park, under which Reilly delegates certain of its rights and responsibilities under this Consent Decree to St. Louis Park. Exhibit B is an integral and enforceable part of this Consent Decree only as to the rights and responsibilities between Reilly and St. Louis Park. No other Party to this Consent Decree is a party to Exhibit B. Exhibit B is not a novation or release of the responsibilities

imposed upon Reilly by this Consent Decree to the United States, the State or Hopkins, and Reilly shall retain all of its rights and responsibilities to the United States, the State and Hopkins for and during the duration of the Consent Decree. Reilly shall remain responsible to St. Louis Park to perform all of its responsibilities under the Consent Decree, except those delegated to St. Louis Park under Exhibit B, so long as St. Louis Park remains in compliance with Exhibit B.

To the extent St. Louis Park performs any responsibility imposed upon Reilly under the Consent Decree, it is understood among the Parties that St. Louis Park is acting on behalf of Reilly as its delegate and that Reilly remains responsible to the United States, the State and Hopkins for the performance of the responsibilities imposed upon Reilly by the Consent Decree. The United States and the State agree to review, evaluate, and respond to any submittals and performances made by St. Louis Park as Reilly's delegate under Exhibit B. In regard to such performance by St. Louis Park, the United States and the State shall correspond with St. Louis Park and due dates shall run from receipt of notice by St. Louis Park. Copies of all such notices to and other correspondence with St. Louis Park shall be sent contemporaneously to Reilly. The United States' or the State's acceptance of any performance by St. Louis Park of any responsibility imposed upon Reilly by the Consent Decree, shall

not create a novation. The Parties further agree that the use of any review or dispute provisions under the Consent Decree by St. Louis Park in performing any of Reilly's responsibilities pursuant to Exhibit B, binds Reilly to the result of the review or the dispute resolution. Any Court review sought by St. Louis Park in carrying out Reilly's responsibilities under the RAP shall include notification in St. Louis Park's petition for review that it is acting on Reilly's behalf as its delegate, and Reilly shall be bound by the Court's determination, provided Reilly had timely notice thereof. The United States and the State may rely on St. Louis Park's representation that Reilly has been notified.

The United States and the State agree that where St. Louis Park is performing, as Reilly's delegate, a responsibility imposed upon Reilly under the Consent Decree, and this responsibility is not performed in a satisfactory or timely manner, or it is anticipated that this responsibility will not be performed in a satisfactory or timely manner, the Regional Administrator or Director shall notify Reilly in writing of such failure of performance or anticipated failure of performance. Reilly shall be excused from making any payments under Part M or Other Law with respect to such a failure in performance unless such failure continues more than thirty (30) Days after receipt of notice, in which case Reilly shall only make payments under Part M or Other Law for each day

such failure continues beyond the thirtieth Day after receipt of notice. However, failure to provide Reilly with such written notice shall not relieve Reilly of any of its responsibilities to the United States or the State under the Consent Decree, except the responsibility to make payments under Part M or Other Law for each day of failure of performance prior to the thirtieth day after receipt of notice. Reilly's performance of any activities delegated to St. Louis Park under Exhibit B shall not prejudice its right to recover the costs thereof from St. Louis Park.

For purposes of this Consent Decree, Reilly shall be considered to be in compliance with this Consent Decree as long as the tasks required of Reilly are being implemented in a timely and satisfactory manner, whether by Reilly or St. Louis Park, or are excused by the provisions of Parts G, H, I, J or N.

Exhibit B provides for the establishment of the St. Louis Park Contingency Fund ("Contingency Fund"). This Contingency Fund is to be used, as more fully stated in Exhibit B itself, for certain expenditures under the RAP. Exhibit B also provides, pursuant to Paragraph 15 thereof, that the Agreement itself, except as provided in Paragraph 6(c) thereof, may become null and void and all performance and/or funding obligations of St. Louis Park shall be discharged under the stated circumstances. In the event Paragraph 15 of Exhibit B becomes operative and monies exist in the Contingency Fund,

then the Contingency Fund shall come under the control of the Court. Monies shall thereafter be disbursed from the Contingency Fund only upon order of the Court after hearing the comments of the United States, the State, St. Louis Park and any other affected city. Monies shall be disbursed from the Contingency Fund only for the funding of tasks or measures required of Reilly by the RAP, including noncontingent measures. Upon the termination of the Consent Decree, the Parties agree and stipulate that the Court shall disburse whatever funds remain in the Contingency Fund to St. Louis Park for use by St. Louis Park without restriction as to purpose.

R.

PAYMENTS BY REILLY

Reilly shall pay:

1. To the United States Hazardous Substance Response Trust Fund One Million Six Hundred Eighty Thousand and no/100 (\$1,680,000.00) Dollars, payable in three equal installments of principal. The first installment shall be paid within 30 Days of the Effective Date. The second installment shall be paid within one year and thirty Days of the Effective Date. The third installment shall be paid within two years and thirty Days of the Effective Date. Interest on the unpaid balance shall accrue from the

thirtieth Day after the Effective Date at the rate established under 28 U.S.C. § 1961. Accrued interest shall be paid with the second and third installments. Reilly shall make an additional payment of forty thousand dollars (\$40,000.00) into the United States Hazardous Substance Response Trust Fund within 30 Days of the Effective Date.

2. To the Environmental Response, Compensation and Compliance Fund of the Treasury of the State of Minnesota the sum of One Million and no/100 (\$1,000,000) Dollars, to be paid on the last business day of:

December, 1985	\$155,000
February, 1986	\$ 37,500
June, 1986	\$155,000
December, 1986	\$155,000
February, 1987	\$ 37,500
June, 1987	\$155,000
December, 1987	\$155,000
February, 1988	\$ 37,500
February, 1989	\$ 37,500
February, 1990	\$ 37,500
February, 1991	\$ 37,500

Any payments due pursuant to this schedule prior to the Effective Date shall be paid within thirty (30) Days of the Effective Date.

Payment of these sums shall be in full and complete satisfaction of all past civil monetary claims of the United States, the State, St. Louis Park, Hopkins, the Housing and Redevelopment Authority of St. Louis Park, Oak Park Village Associates, and Philip's Investment Co., and for future expenditures of the United States, the State, St. Louis Park, Hopkins, the Housing and Redevelopment Authority of St. Louis Park, Oak Park Village Associates, and Philip's Investment Co. associated with implementation of this Consent Decree. Payment of these sums shall not be considered payment of future claims of Oak Park Village Associates and Philip's Investment Co. in accordance with Part U.9. Payment of these sums does not include any response or enforcement costs incurred by the United States and/or the State as the result of Reilly's noncompliance with this Consent Decree or as provided in Parts U.4, U.5, U.6 and U.7.

S.

OTHER CLAIMS

Nothing herein is intended to bar or release any claims, causes of action or demands in law or equity by or

against any person, firm, partnership, corporation or governmental entity not a Party to this Consent Decree which concerns liability arising out of or relating in any way to the generation, storage, treatment, handling, transportation, disposal or presence of any hazardous or other Chemical Substances at, to, from, or in the vicinity of the Site. Except as specifically provided in Part U below, this Consent Decree shall not estop or limit any legal claims of the State or the United States, including, but not limited to, claims related to releases of any hazardous or other Chemical Substances at, to, from or in the vicinity of the Site. Neither the State nor the United States shall be held as a party to any contract entered into by Reilly or St. Louis Park to implement activities pursuant to this Consent Decree.

Parts R and U shall not resolve the rights and defenses of or among the Parties with respect to unasserted claims which may be subsequently brought by a person not a Party to this Consent Decree. Nothing herein is intended to abrogate the doctrine of sovereign immunity, the doctrine of discretionary immunity, the Federal Tort Claims Act or the Minnesota Tort Claims Act.

T.

OTHER APPLICABLE LAWS

All actions required to be taken pursuant to this Consent Decree shall be undertaken in accordance with the

requirements of all applicable local, state and federal laws and regulations, including laws and regulations related to occupational safety and health, permits for surface water discharge, dredge and fill, and disposal of materials in implementation of the Consent Decree, unless an exemption from such requirements is specifically provided by the administering unit of government. Any offsite disposal of hazardous substances in implementation of the Consent Decree shall be to a facility legally permitted to accept such waste and shall be approved by the Regional Administrator and Director. In the event there is a conflict in the application of federal or state law or regulations, the more stringent of the conflicting provisions shall apply.

The EPA, MPCA, the MDH, and St. Louis Park and Hopkins agree to use their best efforts consistent with statutes and regulations they administer to assist Reilly, its contractors, employees and assigns in obtaining permits or approvals from local, state or federal agencies, in accordance with the provisions of this Consent Decree.

U.

SETTLEMENT OF LITIGATION AND ADMINISTRATIVE PROCEEDINGS

To avoid further litigation between the Parties hereto and to resolve the issues presently existing among them based on Information Known To the Parties when settling this matter, the United States, the State, St Louis Park, Hopkins, the

Housing and Redevelopment Authority of St. Louis Park, Oak Park Village Associates, Philip's Investment Co. and Reilly stipulate that:

1. The commitments made by the Parties in this Consent Decree, including the commitment to implement and fulfill the requirements of the RAP, constitute full settlement of the civil claims, crossclaims and counterclaims asserted in this action up to the date of lodging of this Consent Decree and all claims arising out of the administrative actions described below. Except as limited elsewhere in Part U, below, this settlement covers such claims related to:
 - a. the use, production, handling, treatment, storage, transportation, presence, disposal, release, threat of release, migration or discharge of Chemical Substances at, on, or from the Site;
 - b. all administrative, enforcement, remedial and removal costs incurred by the Parties prior to the lodging of this Consent Decree, including but not limited to any civil penalties, attorneys fees and other litigation expenses;
 - c. all administrative costs incurred by the Parties in implementation of this Consent Decree;
 - d. all damages to natural resources;

- e. the previous sales of all or part of the Site;
and,
- f. any claims which could have been brought to enforce EPA's Administrative Order of August 1, 1984, pursuant to Section 106 of CERCLA and the State's Request for Response Action (RFRA) of December 18, 1984, pursuant to Minn. Stat. ch. 115B, including claims for penalties and treble damages.

Further, this settlement covers natural resources damage claims which the Parties could have asserted under Section 107(a) of CERCLA with respect to activities of Reilly at the Site and which the Parties, other than the United States and the State, could have asserted under Minnesota Statutes and common law.

- 2. Within forty-five (45) days of the Effective Date, St. Louis Park and the State shall execute and obtain a dismissal with prejudice and without costs of the Hennepin County Lawsuit, which dismissal shall be submitted to that Court in the form attached hereto as Exhibit C.
- 3. The United States, the State, St. Louis Park, Hopkins, the Housing and Redevelopment Authority of St. Louis Park, Oak Park Village Associates, Philip's

Investment Co. and Reilly each specifically covenant not to bring against any other Party to this Consent Decree any civil or administrative actions authorized by federal, state or local law relating to the use, production, handling, treatment, storage, transportation, discharge, disposal, presence, release, threat of release or migration at, on or from the Site of Chemical Substances so long as that other Party remains in compliance with the requirements of this Consent Decree.

4. However, each of the Parties specifically retains the authority to enforce the terms of this Consent Decree against any Party which fails to maintain compliance with this Consent Decree. In the case of failure of a Party to maintain compliance, all Parties retain authority to take removal or remedial action and recover their costs authorized by federal or state law in regard to such failure.
5. Nothing in this Consent Decree, including Part U.3., shall be construed to limit the authority of the United States, the State or Hopkins to undertake any action against any Party, in response to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment, for any release, threatened release or migration:

a. where the existence or location of the release, threatened release or migration was not Known to the United States, the State or Hopkins at the time of the lodging of this Consent Decree except to the extent that the action or actions to be taken in response to such release, threatened release or migration are being adequately provided for by specific and/or contingent measures undertaken pursuant to the RAP;

b. which release, threatened release or migration was Known but involves pollutants, contaminants, or hazardous substances which were not Known To the United States, the State or Hopkins at the time of the lodging of this Consent Decree, except to the extent that the action or actions to be taken in response to such release, threatened release or migration are being adequately provided for by specific and/or contingent measures undertaken pursuant to the RAP; or,

c. which action, except designation of Additional Carcinogenic PAH as provided for in Part D.1., is necessitated because of information that was learned after the Effective Date and relates to a scientific determination upon which this Consent Decree is premised.

6. Nothing in this Consent Decree, including Part U.3., shall be construed to limit the authority of the

United States, the State or Hopkins to take response actions, and to seek recovery of the cost thereof from any Party for any release, threatened release or migration:

- a. where the existence or location of the release, threatened release or migration was not Known To the United States, the State or Hopkins at the time of the lodging of this Consent Decree, except to the extent that the action or actions to be taken in response to such release, threatened release or migration are being adequately provided for by specific and/or contingent measures undertaken pursuant to the RAP;
- b. which release, threatened release or migration was Known but involves pollutants, contaminants, or hazardous substances which were not Known to the United States, the State or Hopkins at the time of the lodging of this Consent Decree, except to the extent that the action or actions to be taken in response to such release, threatened release or migration are being adequately provided for by specific and/or contingent measures undertaken pursuant to the RAP; or
- c. which response action, except designation of Additional Carcinogenic PAH pursuant to Part D.1., is necessitated because of information that was learned after the Effective Date and relates to a scientific determination upon which this Consent Decree is premised.

7. Nothing in this Consent Decree, including Part U.3, shall be construed to affect the liability (or defenses thereto) of any Party resulting from its off site disposal of hazardous substances in implementation of this Consent Decree.
8. In the event that any action permitted under Part U.5 or U.6 is taken by the United States, the State or Hopkins against any Party, nothing in this Consent Decree shall be construed as in any way limiting the rights of any such Party to assert against any other Party in any such action any defenses, claims, crossclaims or counterclaims relating to the subject matter of any such action, including those previously asserted and pending in this action or the Hennepin County Lawsuit prior to the Effective Date.
9. It is understood and agreed that Oak Park Village Associates and Philip's Investment Co., each and both of them, settle all of their claims which were asserted or which could have been asserted up to the date of lodging of this Consent Decree. Nothing in this Consent Decree, including Part U.3, shall preclude a claim, during the term of this Consent Decree, by Oak Park Village Associates or Philip's Investment Co., against any other Party, except the United States and the State, for diminution of property value from the value of the property at the time

purchased by Oak Park Village Associates and Philip's Investment Co. which may accrue after the Effective Date and which is the result of the use, production, handling, treatment, storage, transportation, discharge, disposal, presence, release, threat of release or migration at, on or from the Site of hazardous substances, pollutants or contaminants. With regard to paragraph 14 of the Agreement for Purchase and Sale of Real Estate dated June 1, 1979, by and between the Housing and Redevelopment Authority of St. Louis Park and Philip's Investment Co., it is understood that if Philip's Investment Co. releases any damage claim against the United States, Reilly or the State by virtue of this settlement, such release shall not bar indemnification claims because of paragraph 14(d). Additionally, it is understood that all other rights, remedies and obligations, procedural and substantive, of that paragraph 14 are left for future determination, if necessary.

V.

RETENTION OF AUTHORITY

Notwithstanding anything in this Consent Decree, the United States and the State retain their authority to undertake response actions authorized by law. However, the right to recover response costs for such response actions from the

Parties to this Consent Decree shall be governed by Part U (Settlement of Litigation and Administrative Proceedings.)

W.

PRODUCTION OF DATA

Reilly agrees to provide the Regional Administrator and the Director and the Regional Administrator and Director agree to provide to Reilly within thirty (30) Days of the Effective Date copies of all data in any form satisfactory to the receiving Party relating to this case on soil, groundwater conditions and contamination in St. Louis Park and adjoining communities in their possession, custody, or control including that possessed by consultants who have worked on this case, which have not previously been produced in the course of the litigation to either the United States, the State or Reilly.

X.

NO CLAIMS AGAINST STATE AND FEDERAL SUPERFUND

Reilly, St. Louis Park, Hopkins, the Housing and Redevelopment Authority of St. Louis Park, Oak Park Village Associates, and Philip's Investment Co. agree to make no claims for expenses related, directly or indirectly, to this litigation and this Consent Decree against the Federal Hazardous Substance Response Trust Fund established under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq. or the Environmental Response, Compensation and Compliance Fund established under the Minnesota Environmental Response and Liability Act,

Minn. Stat. Chapter 115B. The State agrees to make no claims under Sections 111 and 112 of CERCLA, 42 U.S.C. §§ 9601 et seq., for costs and expenses related, directly or indirectly, to this litigation, the Hennepin Court Lawsuit and this Consent Decree against the Federal Hazardous Substance Response Trust Fund. Any claims that the United States may have against Reilly under past and present cooperative agreements with the State related to the Site are resolved in Part R.

Y.

LIABILITY INSURANCE

Within thirty (30) Days of the Effective Date, Reilly shall provide the Regional Administrator and Director with current certificates of insurance certifying coverage for general liability which may arise in carrying out this Consent Decree with minimum limits of One Million and no/100 Dollars (\$1,000,000.00) per occurrence, an annual aggregate of at least Two Million and no/100 Dollars (\$2,000,000.00), exclusive of legal defense costs, for bodily injury and property damage liability combined, and containing the provision that the insurance shall not be cancelled for any reason except upon thirty (30) days written notice to Reilly, the Regional Administrator and Director.

These insurance limits are not to be construed as maximum limits. Reilly is solely responsible for determining the appropriate amount of insurance it should carry for

injuries or damages that may result from the implementation of this Consent Decree.

2.

FINANCIAL RESPONSIBILITY

1. By May 31 of each year, Reilly shall deliver to the United States and the State, a certificate prepared by Reilly's certified public accounting firm which sets forth whether Reilly's consolidated performance is in accord with the requirements set forth below.

The certificate shall include the results of four tests which are applied to Reilly's audited financial statements. The four financial tests are defined below:

a. Current ratio, defined as:

$$\text{Current ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$$

where

Current Assets = All of end-of-period (previous calendar year) current assets as reported on balance sheet in accordance with standard accounting conventions

Current Liabilities = All end-of-period current liabilities plus the current portion of any long-term debt held by Reilly

b. Net Working Capital defined as:

Net Working Capital = End-of-period current assets minus end-of-period current liabilities

c. Total Liabilities/Tangible Net Worth Ratio, defined as:

$$\frac{\text{Total Liabilities}}{\text{Tangible Net Worth}} = \frac{\text{Total Liabilities}}{\text{Net Worth} - \text{Intangible Assets}}$$

Net Worth = End-of-period owner's preferred and common equity including retained earnings and paid-in capital

Intangible Assets = End-of-period book value of any nonphysical or financial assets such as patents, trademarks, and goodwill

Total Liabilities = End-of-period total assets minus end-of-period net worth

d. Retained Earnings, defined as:

$$\text{Retained Earnings} = \text{Cumulative internally generated earnings available to common stock shareholders and not paid out as dividends}$$

2. The certificate given by Reilly to the United States and the State shall state whether Reilly has failed any of the four tests. The failure criteria for the four tests are listed below:

a. Reilly's Current Ratio, as defined above, is lower than 1.75.

b. Reilly's Net Working Capital, as defined above, is less than 70 percent of its 1984 end-of-period value.

c. Reilly's Total Liabilities/Net Worth ratio, as defined above, is greater than 1.1.

d. Reilly's Retained Earnings, as defined above, is less than 70 percent of its 1984 end-of-period value. */

*/ If Reilly should choose to recapitalize its equity in the future in some manner which influences the continuity of reported retained earnings, the United States and the State will be informed and the earnings will be restated on a December 31, 1984 basis and that basis will be used for determining subsequent compliance.

Reilly will be deemed to have failed the short-term requirement if it fails either the Current Ratio test or the Net Working Capital test. Reilly will be deemed to have failed the long-term requirement if it fails either the Total Liabilities/Net Worth ratio test or the Retained Earnings test.

3. If Reilly fails the short-term requirement, it shall provide to the United States and the State within sixty (60) Days of notification to the United States and the State of such failure, a letter of credit, surety bond, or other assurance for an amount equal to the estimated cost of the remedial actions which Reilly is required to take in the next two years under the RAF. If Reilly passes the short-term requirement for the year immediately following a year for which the short-term requirement was failed, it may reduce the amount of the letter of credit, surety bond, or other assurance to one-half of its original amount. If Reilly again passes the short-term requirement for the following year, it may further reduce the amount of the letter of credit, surety bond or other assurance to zero and discontinue them. However, if Reilly fails the short-term requirement in successive years, the amount of any letter of credit, surety bond or other assurance shall be adjusted each year to equal the estimated cost of remedial actions to be undertaken in the next two years.

If Reilly fails the long-term requirement, it shall provide to the United States and the State within sixty (60)

Days of notification to the United States and the State of such failure a letter of credit, surety bond, or other assurance for an amount equal to the estimated cost of all the remaining remedial actions to be undertaken in all future years as imposed upon Reilly by the RAP, including the cost of contingencies. Reilly may reduce the amount of the letter of credit, surety bond, or other assurance to zero and discontinue them if it passes the long-term requirement in two successive years after having failed the long-term requirement for successive years. The amount of any letter of credit, surety bond or any other assurance shall be adjusted each year to equal the estimated costs of the remedy, including the costs of contingencies.

If Reilly fails the short-term requirement for the same year for which it fails the long-term requirement, the conditions applying to the failure of the long-term requirement, as described in the immediately preceding paragraph, shall take precedence over the conditions described for failure of the short-term requirement.

If Reilly fails the long-term requirement, the estimated remedial action costs shall be composed of three parts: (1) capital construction costs, which if relevant, shall be based on estimated construction costs required to complete construction, (2) operation and maintenance costs, which shall be based, if possible, on historical operation and maintenance costs adjusted for inflation, and (3) an additional amount to

cover contingencies. The additional amount will be determined by the United States and the State according to apparent costs and likelihood of additional remedial actions. The amount then in the St. Louis Park Contingency Fund created in Exhibit B shall constitute a credit against the amount of any letter of credit, surety bond or other assurances which Reilly is obligated to provide in the event it fails the long-term requirement. However, because the United States and the State did not participate in negotiating Exhibit B, they have not agreed that the amounts payable to the St. Louis Park Contingency Fund are adequate to cover the estimated cost of contingencies in the event Reilly fails the long-term requirement.

If there is a dispute among the Parties as to the estimated amount of the remedial actions under the RAP, including the costs of contingencies, any of those Parties may request an expedited hearing before the Court to determine the appropriate amount. Such expedited hearing shall be completed within 45 Days of May 31 of that year subject to the availability of the Court. Nonetheless, Reilly shall provide a letter of credit, surety bond or other assurances for the lower of the disputed amounts within sixty (60) Days of May 31 and shall augment that letter of credit, surety bond or other assurances to reflect the decision of the Court within sixty (60) Days of that decision.

If Reilly does not provide a letter of credit, surety bond, or other assurance of its access to credit in appropriate amount within the time periods required by this Part, Reilly shall within twenty (20) Days pay the amount required by this Part to be covered by any letter of credit, surety bond or other assurances into the registry of the Court. Reilly may petition the Court to release the funds at any time it can demonstrate that it has a letter of credit, surety bond or assurances in the appropriate amount, or has satisfied the appropriate requirement for the appropriate number of years so that a letter of credit, surety bond or other assurance would not otherwise be required.

4. The United States, the State, or Reilly may, based on new information, petition the Court once each year between May 31 and July 31 to adjust the amount necessary to cover remaining actions imposed upon Reilly by the RAP as contained in the letter of credit, surety bond or trust fund.

In the event that Reilly enters into default on any of its short-term or other fixed loans, whether challenged by its creditors or not, Reilly shall inform the United States and the State of said event and shall be obligated to respond to requests from the United States or the State for additional explanatory information.

5. All information submitted by Reilly concerning its financial status for which Reilly claims confidentiality shall

be afforded the protection specified in 5 U.S.C. § 552(b)(4), 18 U.S.C. § 1905, 42 U.S.C. § 9604(e)(2)(A) and 40 C.F.R. Part 2, subpart B by EPA, and the protection of Minn. Stat. §§ 13.37(b), 115B.17(5) and 116.075, subd. 2 by the State. Information which is properly determined to be confidential by EPA and by the State, shall only be provided to such employees, agents, and contractors of the United States and the State who would use the information to oversee implementation of this Consent Decree. Each such employee, agent, or contractor shall be provided with a copy of this Part 2 and shall sign a statement that he or she shall abide by the confidentiality provisions of this Part 2. Notwithstanding these confidentiality provisions, if the information submitted by Reilly may provide evidence of a violation of federal, state or local law, the United States or the State may provide that information to the appropriate enforcement agency. Information concerning the actual or estimated cost of implementing the RAP will not be claimed confidential by Reilly and may be made public.

6. Reilly shall provide each year by May 31 to the United States and the State, the information which, as of the Effective Date, would be required under 40 C.F.R. § 264.143(f)(3). Based on this information, or any other information about Reilly's financial condition which comes to the attention of the United States or the State, the United

States or the State may petition the Court for additional financial assurances from Reilly.

AA.

MODIFICATION

Except as otherwise provided herein, this Consent Decree and its Exhibits may be amended by written agreement of the Parties and shall become effective upon approval by the Court.

BB.

DURATION OF CONSENT DECREE

1. This Consent Decree shall remain in effect until the remedial elements specified in Parts BB.2(a) through (f) and BB.3. have been certified as complete in the manner herein provided and the plan specified in Part BE.7 is approved and any financial guarantee thereunder is in place, but in any event, not less than thirty (30) years after the Effective Date.

2. At any time, starting six months before the thirtieth anniversary of the Effective Date, Reilly may request certification from the Regional Administrator and the Director that any of the following remedial elements of the RAP have been completed as demonstrated by attainment of the applicable cessation criteria and that the results of the most recent five years of post cessation Monitoring immediately prior to the certification request have not exceeded the applicable cessation criteria.

- a. Operation of the drinking water treatment system at SLP 10 and 15, as specified in Section 4 of the RAP.
- b. Operation of the Ironton-Galesville source control well as specified in Section 6 of the RAP.
- c. Operation of the source and gradient control well system in the Prairie du Chien-Jordan aquifer, including wells W23, SLP4, W48 and any additional wells required by the Regional Administrator and Director, as specified in Section 7 of the RAP.
- d. Operation of any remedial measures determined for the St. Peter aquifer under Section 8 of the RAP.
- e. Operation of source and gradient control wells in the Drift and Platteville aquifers under Section 9 of the RAP.
- f. Operation of any drinking water treatment system installed under Section 12 of the RAP.

Each of the foregoing remedial elements shall include the Monitoring requirements associated with it in the RAP.

3. At any time starting six months before the thirtieth anniversary of the Effective Date, Reilly may request certification from the Regional Administrator and the Director that the requirements of Section 10.3 of the RAP have been completed.

4. Any request for certification of completion pursuant to Parts BB.2 or BB.3 shall bear the caption of this case and shall be served upon the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice; the United States Attorney for the District of Minnesota; and the Minnesota Attorney General, as well as the other persons identified in Part L. The Regional Administrator

and Director shall notify Reilly, St. Louis Park and certify to the Court which, if any, of the remedial elements listed in Parts BB.2 or BB.3 have been completed. With respect to each remedial element and associated contingent action(s) certified as completed by both the Regional Administrator and the Director pursuant to Parts BB.2 and BB.3, the Consent Decree shall be terminated by the Court; with respect to all such remedial elements and associated contingent action(s) not so certified, the Consent Decree will remain in effect.

5. If, following Reilly's requests, the Regional Administrator and/or Director decline to certify that any remedial element of the RAP is completed, they shall notify Reilly, St. Louis Park and the Court of their decision. Within thirty (30) Days of receipt of such notification, Reilly may petition the Court to review the Regional Administrator's and/or Director's decision. Upon such petition for review, the issues before the Court with respect to the remedial elements in Part BB.2(a) through (f) shall be limited to whether the analytical data demonstrate that the cessation criteria for that remedial element have been met and whether the analytical data demonstrate that there have been five years of post cessation monitoring and that the results of post cessation monitoring for the most recent five years prior to the certification request do not necessitate resumption of the remedial element.

6. All Monitoring and other requirements of the RAP not associated with any of the remedial elements listed in Part BB.2(a) through (f), BB.3 or BB.7 shall terminate thirty (30) years after the Effective Date.

7. Except for any action under Part BB.2(f) in the Mt. Simon-Hinckley aquifer, the Consent Decree shall terminate with respect to the Mt. Simon-Hinckley aquifer when the plan specified in Section 5.2. of the RAP is approved and any financial guarantees thereunder are in place.

8. Any disputes under this Part BB shall be resolved by petition to the Court. The Consent Decree as a whole shall terminate when the Regional Administrator and Director have certified to the Court and the Court has approved: that each of the remedial elements identified in Parts BB.2(a) through (f) and BB.3 has been completed; that the plan specified in Part BB.7 has been approved and financial guarantees thereunder are in place; and all payments due have been paid and all disputes pending have been resolved.

CC.

PUBLIC NOTICE AND WITHDRAWAL OF CONSENT

The Parties acknowledge that entry of this Consent Decree by the Court is subject to the requirements of 28 C.F.R. § 50.7, which establishes the policy of the Department of Justice to afford persons who are not named as parties to an action to comment on proposed judgments prior to their entry by the Court. Consistent with this policy, the State, through its

Attorney General, prior to entry of judgment of this Consent Decree or some earlier specified date, also will review any written comments submitted to the Department of Justice under 28 C.F.R. § 50.7. The State, through its Attorney General, reserves the right to withdraw or withhold its consent to the proposed judgment if (1) the comments received by the Department of Justice disclose facts or considerations which indicate that the proposed judgment is inappropriate, improper or inadequate and (2) the comments disclosing such facts or considerations were not considered by the State prior to execution of the Consent Decree.

In addition, all parties acknowledge that if the Department of Justice withholds or withdraws its consent pursuant to 28 C.F.R. § 50.7, this Consent Decree shall be null and void. In such an event, no Party shall be bound by the requirements of this Consent Decree.

DD.

INTERPRETATION OF CONSENT DECREE

The Parties agree that prior drafts of this Consent Decree and its Exhibits shall not be used to aid in the interpretation of this Consent Decree and its Exhibits. The Parties further agree that Exhibit B shall not be used to aid in the interpretation of this Consent Decree, including Exhibit A.

EE.

EFFECTIVE DATE

This Consent Decree is effective upon the date of its entry by the Court.

FF.

CONTINUING JURISDICTION OF THE COURT

This Court specifically retains jurisdiction over both the subject matter hereof and the Parties hereto for the duration of this Consent Decree for the purposes of enforcing or modifying the terms of this Consent Decree, or for granting any other relief not inconsistent herewith which the Court deems appropriate and just.

IT IS SO ORDERED:

Dated: September 4, 1986

Paul J. Magraw
United States District Judge

The parties hereto consent to the entry of this Consent Decree.

REILLY TAR & CHEMICAL CORP.
Defendant

By Thomas E. Reilly, Jr.
President

By Edward J. Schwartzbauer
Edward J. Schwartzbauer
Dorsey & Whitney
Attorneys for Reilly Tar
& Chemical Corporation

UNITED STATES OF AMERICA
Plaintiff

By F. Henry Habicht II
Assistant Attorney General
Land & Natural Resources
Division
U.S. Department of Justice

By David Hird
David Hird, Attorney
Land & Natural Resources Division
U.S. Department of Justice

STATE OF MINNESOTA
Plaintiff-Intervenor

By Duane A. Dahlberg
Duane Dahlberg
Chairperson, MPCA

By Thomas J. Kalitowski
Thomas J. Kalitowski
Director, MPCA

By St. Mary Madonna Ashton
St. Mary Madonna Ashton
Commissioner, MDH

By Hubert H. Humphrey, III
Hubert H. Humphrey, III
Attorney General

By Stephen Shakman
Stephen Shakman
Special Assistant
Attorney General

CITY OF ST. LOUIS PARK
Plaintiff-Intervenor

By Lyle W. Hanks
Mayor

By Wayne G. Popham
Wayne G. Popham
Popham, Haik, Schnobrich,
Kaufman & Doty, Ltd.
Attorneys for City of
St. Louis Park

JEROME G. ARNOLD
United States Attorney

By Francis X. Hermann
Francis X. Hermann
Asst. United States Attorney

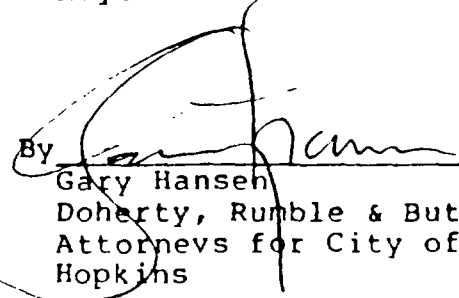
By Assistant Administrator
Assistant Administrator
Office of Enforcement and
Compliance Monitoring (Acting)
U.S. Environmental Protec-
tion Agency

By Valdas V. Adamkus
Valdas V. Adamkus
Regional Administrator
U.S. Environmental Protec-
tion Agency
Region V

By Robert E. Leininger
Robert E. Leininger
Assistant Regional Counsel
U.S. Environmental Protec-
tion Agency
Region V


CITY OF HOPKINS
Plaintiff-Intervenor

By 
Mayor

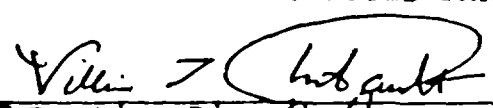
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Doherty, Rumble & Butler
Attorneys for City of
Hopkins

OAK PARK VILLAGE ASSOCIATES
BY DIVERSIFIED EQUITIES CORP.
ITS GENERAL PARTNER

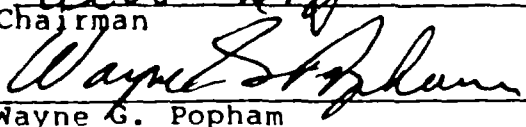
By 
President, Diversified
Equities Corp.

By 
Timothy H. Butler
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Attorneys for Oak Park
Village Associates

THE HOUSING AND REDEVELOPMENT
AUTHORITY OF ST. LOUIS PARK


By 
Executive Director

By 
Chairman

By 
Wayne G. Popham
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PHILIP'S INVESTMENT CO.

By 
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