

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUN 20 1994

JAMES W. MCCORMACK, CLERK
By: *[Signature]*
CLERK

UNITED STATES OF AMERICA

Plaintiff,

v.

CITY OF JACKSONVILLE,

Defendant.

CIVIL ACTION NO.
LR-C-94-196

001305

ORDER

WHEREFORE, upon the Motion of Plaintiff, the United States of America, for Entry of the proposed Consent Decrees between the United States and the City of Jacksonville, Arkansas, it is this ~~17th~~ ^{June} day of ~~May~~ 1994,

ORDERED that the United States' Motion be and is hereby GRANTED.

[Signature: Esijane T. Ray]
UNITED STATES DISTRICT JUDGE

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79(a) FRCP
ON 6-20-94 BY *[Signature]*

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUN 17 1994

JAMES W. MCCORMACK, CLERK
By: _____
DEP CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

CITY OF JACKSONVILLE,

Defendant.

CIVIL ACTION NO.

LR-C- 94 - 196

001306

CONSENT DECREE

94530

**JACKSONVILLE MUNICIPAL LANDFILL SUPERFUND SITE
JACKSONVILLE, ARKANSAS
RD/RA CONSENT DECREE**

TABLE OF CONTENTS

	Page
I. <u>BACKGROUND</u>	1
II. <u>JURISDICTION</u>	4
III. <u>PARTIES BOUND</u>	4
IV. <u>DEFINITIONS</u>	5
V. <u>GENERAL PROVISIONS</u>	10
VI. <u>PERFORMANCE OF THE WORK BY SETTLING DEFENDANT</u>	13
VII. <u>ADDITIONAL RESPONSE ACTIONS</u>	18
VIII. <u>U.S. EPA PERIODIC REVIEW</u>	20
IX. <u>QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS</u>	21
X. <u>ACCESS</u>	24
XI. <u>REPORTING REQUIREMENTS</u>	26
XII. <u>SUBMISSIONS REQUIRING AGENCY APPROVAL</u>	28
XIII. <u>PROJECT COORDINATORS</u>	31
XIV. <u>ASSURANCE OF ABILITY TO COMPLETE WORK</u>	33
XV. <u>CERTIFICATION OF COMPLETION</u>	34
XVI. <u>EMERGENCY RESPONSE</u>	38
XVII. <u>REIMBURSEMENT OF RESPONSE COSTS</u>	39
XVIII. <u>INDEMNIFICATION AND INSURANCE</u>	43
XIX. <u>FORCE MAJEURE</u>	46
XX. <u>DISPUTE RESOLUTION</u>	49
XXI. <u>STIPULATED PENALTIES</u>	54
XXII. <u>COVENANTS NOT TO SUE BY PLAINTIFF</u>	60

TABLE OF CONTENTS (cont'd)

	Page
XXIII. <u>COVENANTS BY SETTLING DEFENDANT</u>	64
XXIV. <u>EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION</u>	65
XXV. <u>ACCESS TO INFORMATION</u>	67
XXVI. <u>RETENTION OF RECORDS</u>	69
XXVII. <u>NOTICES AND SUBMISSIONS</u>	71
XXVIII. <u>EFFECTIVE DATE</u>	72
XXIX. <u>RETENTION OF JURISDICTION</u>	72
XXX. <u>APPENDICES</u>	73
XXXI. <u>COMMUNITY RELATIONS</u>	73
XXXII. <u>MODIFICATION</u>	73
XXXIII. <u>LODGING AND OPPORTUNITY FOR PUBLIC COMMENT</u>	74
XXXIV. <u>SIGNATORIES/SERVICE</u>	75

001308

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

001309

UNITED STATES OF AMERICA

Plaintiff,

v.

CITY OF JACKSONVILLE,

Defendant.

CIVIL ACTION NO.

CONSENT DECREE

I. BACKGROUND

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

B. The United States in its complaint seeks, inter alia:

(1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Jacksonville Municipal Landfill Superfund Site in Lonoke County, Arkansas, together with accrued interest; and (2) performance of studies and response work by the Defendant at the Site consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of

Arkansas (the "State") on December 7, 1990 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior, Office of Environmental Project Review, on January 17, 1991 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree.

E. The Defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on July 22, 1987, 52 Fed. Reg. 27620, 27623;

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA commenced on April 15, 1988, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430;

H. EPA completed a Remedial Investigation ("RI") Report in June 1990, and EPA completed a Feasibility Study ("FS") Report in June 1990;

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action in July 1990, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 27, 1990, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

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

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

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

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

II. JURISDICTION

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

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendant and its agents, successors and assigns. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way

alter Settling Defendant's responsibilities under this Consent Decree.

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

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are

used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

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

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

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

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

"ADPC&E" shall mean the Arkansas Department of Pollution Control and Ecology and any successor departments or agencies of the State.

"Future Response Costs" shall mean all costs, including, but not limited to, indirect costs, that the United States or the Settling Defendant incur in reviewing or developing plans, reports and other items pursuant to this Consent Decree, performing the work, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to,

payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, VIII, X (including, but not limited to, attorneys fees and the amount of just compensation), XVI, and Paragraph 85 of Section XXII. The intent of the parties with respect to responsibility for Future Response Costs is reflected in Paragraph 52, Section XVII.

"Matters Addressed in this Consent Decree" shall mean liability under CERCLA sections 106 and 107, 42 U.S.C. §§ 9606, 9607, and RCRA section 7003, 42 U.S.C. § 6973, for all response costs (as response is defined in section 101 of CERCLA, 42 U.S.C. § 9601) incurred in connection with the Site by any party, and any and all past, present, and future response actions taken in connection with the Site by any party.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

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

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

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

"Past Response Costs" shall mean all costs, including, but not limited to, interest and indirect costs, that the United States incurred with regard to the Site prior to the effective date of this Consent Decree.

"Performance Requirements" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in the ROD and Section I.D. of the SOW.

"Plaintiff" shall mean the United States.

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 27, 1990, by the Regional Administrator, EPA Region 6, and all attachments thereto.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendant to implement the Performance Requirements as stated in the SOW and the Remedial Action specifications incorporated into the Remedial Action Work Plan pursuant to Paragraph I.E. of the SOW.

"Remedial Action Work Plan" shall mean the document submitted by the Settling Defendant pursuant to Paragraph 12.a of this Consent Decree and described more fully in Paragraph 12.b.

"Remedial Design" shall mean those activities undertaken to develop the final plans and specifications for the Remedial Action.

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

"Settling Defendant" shall mean the City of Jacksonville, Arkansas, a municipal corporation organized under the laws of the State of Arkansas.

"Site" shall mean the Jacksonville Municipal Landfill Superfund site, encompassing approximately 40 acres, located in Lonoke County, Arkansas and depicted generally on the map attached as Appendix C. For the purpose of the Remedial Action and this Consent Decree, and for the purpose of CERCLA § 121(e), 42 U.S.C. § 9621(e) and §§ 300.5 and 300.400(e) of the NCP, pursuant to CERCLA § 104(d)(4), 42 U.S.C. § 9604(d)(4), and the Record of Decision, the term "Site" shall also include those portions of the Vertac Chemical Corporation Superfund site necessary to implement the Remedial Action.

"State" shall mean the State of Arkansas.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree, and any modifications to it made in accordance with this Consent Decree. The Statement of Work does not include activities to be performed by EPA.

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

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

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

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

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Defendant and EPA and to reimburse response costs of the Plaintiff, to resolve the claims of the Plaintiff against the Settling Defendant, and to provide the Settling Defendant contribution protection to the maximum extent allowed under Section 113(f) of CERCLA.

6. Commitments by Settling Defendant

Settling Defendant shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Settling Defendant shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

7. Compliance With Applicable Law

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

8. Permits

a. As provided in Section 121(e) of CERCLA and § 300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on the Site. Where any portion of the Work requires a federal or state permit or approval, the Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, the Settling Defendant shall record a certified copy of this Consent Decree with the Recorder's Office or Registry of Deeds or other appropriate office, Pulaski and Lonoke Counties, State of Arkansas. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of the Settling Defendant with respect to the provision of access under Section X (Access) shall be binding upon the Settling Defendant and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Settling Defendant shall record

at the Registry of Deeds, or other office where land ownership and transfer records are maintained for the property, a notice of obligation to provide access under Section X (Access) and related covenants. Each subsequent deed to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. The Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendant's obligations under this Consent Decree, including their obligations to provide or secure access pursuant to Section X, shall continue to be met by the Settling Defendant. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Settling Defendant to comply with the Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by the Settling Defendant pursuant to Sections VI (Performance of the Work

by Settling Defendant), VII (Additional Response Actions), VIII (U.S. EPA Periodic Review), and IX (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Within 10 days after the lodging of this Consent Decree, Settling Defendant shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, the Settling Defendant proposes to change a Supervising Contractor, Settling Defendant shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify the Settling Defendant in writing. Settling Defendant shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to it within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

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

11. Remedial Design.

Within 30 days after the effective date of this Consent Decree, EPA will provide to the Settling Defendant the specifications necessary to complete the Remedial Action, which specifications the Settling Defendant shall incorporate into the Remedial Action Work Plan required by Paragraph 12.

12. Remedial Action.

a. Within 30 days after the Settling Defendant receives the specifications from EPA pursuant to Paragraph 11, the Settling Defendant shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction of the remedy, in accordance with the SOW and the specifications. The Parties agree that the Remedial Action Work Plan shall only cover those activities to be performed by the Settling Defendant, and will not address those activities to be performed by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under

this Consent Decree. At the same time as it submits the Remedial Action Work Plan, Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following: (1) the schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Project Plan; (5) a groundwater monitoring plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the specifications and shall identify the initial formulation of the Settling Defendant's Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the

State, the Settling Defendant shall implement the activities required under the Remedial Action Work Plan. The Settling Defendant shall submit all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Settling Defendant shall not commence physical on-site activities at the Site prior to approval of the Remedial Action Work Plan.

13. The Work performed by the Settling Defendant pursuant to this Consent Decree shall include the obligation to achieve the Performance Requirements.

14. Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Remedial Action Work Plan constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plan will achieve the Performance Requirements. Settling Defendant's compliance with the work requirements shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Requirements. EPA acknowledges that, pursuant to Paragraph 11, it is providing the specifications for the Remedial Action as set forth in the ROD and the SOW which the

Settling Defendant will incorporate into the Remedial Action Work Plan pursuant to Paragraph 12.

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

a. EPA shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. EPA shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

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

VII. ADDITIONAL RESPONSE ACTIONS

16. In the event that EPA determines or the Settling Defendant proposes that additional response actions involving non-hazardous work are necessary to meet the Performance Requirements or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided to the Project Coordinator for the other party.

17. Within 30 days of receipt of notice from EPA or Settling Defendant pursuant to Paragraph 16 that additional response actions are necessary (or such longer time as may be specified by EPA), the Settling Defendant shall submit for approval by EPA, after reasonable opportunity for review and comment by the State, a work plan for the additional response actions. The plan shall conform to the applicable requirements of Paragraphs 11 and 12. Upon approval of the plan pursuant to Section XII (Submissions Requiring Agency Approval), Settling Defendant shall implement the plan for additional response actions in accordance with the schedule contained therein.

18. Any additional response actions that the Settling Defendant determines are necessary to meet the Performance Requirements or to carry out the remedy selected in the ROD shall be subject to approval by EPA, after reasonable opportunity for review and comment by the State, and, if authorized by EPA, shall be completed by the Settling Defendant in accordance with plans,

specifications, and schedules approved by EPA pursuant to Section XII (Submissions Requiring Agency Approval).

19. The Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance Requirements or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Paragraphs 62-65 of this Consent Decree.

VIII. U.S. EPA PERIODIC REVIEW

20. Settling Defendant shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

21. If required by Sections 113(k)(2) or 117 of CERCLA, Settling Defendant and the public will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region 6, or his/her delegate will determine in writing whether further response actions are appropriate.

22. If the Regional Administrator, EPA Region 6, or his/her delegate determines that information received, in whole or in part, during the review conducted pursuant to Section 121(c) of CERCLA, indicates that the Remedial Action is not protective of human health and the environment, the Settling Defendant shall undertake any further response actions EPA has determined are appropriate, unless their liability for such further response actions is barred by the Covenant Not to Sue set forth in Section XXII. Settling Defendant shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendant) and shall implement the plan approved by EPA. However, the Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (1) EPA's determination that the remedial action is not protective of human health and the environment, (2) EPA's selection of the further response actions ordered as arbitrary and capricious or otherwise not in accordance with law, or (3) EPA's determination that the Settling Defendant's liability for the further response actions requested is reserved in Paragraphs 80, 81, or 83 or otherwise not barred by the Covenant Not to Sue set forth in Section XXII.

IX. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

23. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all environmental, compliance and monitoring samples in accordance with EPA's "Interim

Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendant shall submit for approval by EPA, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendant shall ensure that EPA personnel and its authorized representatives are allowed access to all laboratories utilized by Settling Defendant in implementing this Consent Decree. In addition, Settling Defendant shall assure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendant shall ensure that the laboratories utilized by them for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab

Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Settling Defendant shall ensure that all laboratories used by them for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

24. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Settling Defendant shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendant's implementation of the Work.

25. Settling Defendant shall submit to EPA two (2) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendant with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

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

X. ACCESS

27. Commencing upon the date of lodging of this Consent Decree, the Settling Defendant agree to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Settling Defendant, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendant or its agents, consistent with Section XXV; and

g. Assessing Settling Defendant's compliance with this Consent Decree.

28. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Settling Defendant, Settling Defendant shall use best efforts to secure from such persons access for Settling Defendant, as well as for the United States and its representatives, including, but not limited to, EPA and their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of entry of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendant in writing that additional access beyond that previously secured is necessary, Settling Defendant shall promptly notify the United States, and shall include in that notification a summary of the steps Settling Defendant has taken to attempt to obtain access. The United States may, as it deems appropriate, assist Settling Defendant in obtaining access. Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVII (Reimbursement of Response Costs), for all costs incurred by the United States in obtaining access, including, but not limited to, attorneys fees and the amount of just compensation.

29. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

XI. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and the State two (2) copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous month; (c) identifies all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendant has proposed to EPA or that have

been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Settling Defendant shall submit these progress reports to EPA and the State by the tenth day of every month following the entry of this Consent Decree until EPA notifies the Settling Defendant pursuant to Paragraph 48.b of Section XV (Certification of Completion). If requested by EPA, Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.

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

32. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Branch, Region 6, United States Environmental Protection

Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

001336

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

34. Settling Defendant shall submit two (2) copies of all plans, reports, and data required by the SOW, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Defendant shall simultaneously submit two (2) copies of all such plans, reports and data to the State.

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

XII. SUBMISSIONS REQUIRING AGENCY APPROVAL

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendant modify the submission; or (e) any combination of the above.

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

38a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Defendant shall, within 14 days or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXI, shall accrue during the 14-day period

or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 39.

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

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

40. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendant invokes the dispute resolution procedures set forth in Section XX (Dispute Resolution) and EPA's action is overturned pursuant to

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

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

XIII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall

be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be acting as an attorney for the Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

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

44. EPA's Project Coordinator and the Settling Defendant's Project Coordinator will meet, at a minimum, on a monthly basis during the Remedial Action. During Operation and Maintenance,

EPA's Project Coordinator and the Settling Defendant's Project Coordinator will meet as needed to discuss monitoring results.

001341

XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of lodging of this Consent Decree, Settling Defendant shall establish and maintain financial security in the amount of \$ 750,000 in one of the following forms:

- (a) A surety bond guaranteeing performance of the Work;
- (b) One or more letters of credit equalling the total estimated cost of the Work;
- (c) A trust fund;
- (d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with the Settling Defendant; or
- (e) A demonstration that the Settling Defendant satisfies the requirements of 40 C.F.R. § 264.143(f) or requirements substantially similar to 40 C.F.R. § 264.143(f).

46. If the Settling Defendant seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45(d) of this Consent Decree, Settling Defendant shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Defendant seeks to demonstrate its ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph

45(d) or (e), it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendant shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 45 of this Consent Decree. Settling Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XV. CERTIFICATION OF COMPLETION

47. Completion of the Remedial Action

a. Within 90 days after Settling Defendant concludes that the Remedial Action has been fully performed and the Performance Requirements have been attained, the Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-certification inspection, the Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Requirements have been attained, it shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XII (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer and the Settling Defendant's

Project Coordinator shall certify that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendant's Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Requirements have not been achieved, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Requirements. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its

right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent Certification of Completion by Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been fully performed in accordance with this Consent Decree and that the Performance Requirements have been achieved, EPA will so certify in writing to Settling Defendant. This certification will be sent to the Settling Defendant within 60 days from the date EPA receives either the initial or subsequent Certification of Completion by Settling Defendant upon which EPA based its conclusion that the Remedial Action has been fully performed. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendant's obligations under this Consent Decree.

48. Completion of the Work

a. Within 90 days after Settling Defendant concludes that all phases of the Work (including O & M), have been fully performed, Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. If, after the pre-certification inspection, the Settling Defendant still believes that the Work has been fully performed,

Settling Defendant shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendant's Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendant in writing of the activities that must be undertaken to complete the Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XII (Submissions Requiring Agency Approval). Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling

Defendant and after a reasonable opportunity for review and comment by the State, that the Work has been fully performed in accordance with this Consent Decree, EPA will so notify the Settling Defendant in writing.

XVI. EMERGENCY RESPONSE

49. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendant shall, subject to Paragraph 50, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA Emergency Response Branch, Region 6. Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA

all costs of the response action not inconsistent with the NCP pursuant to Section XVII (Reimbursement of Response Costs).

50. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVII. REIMBURSEMENT OF RESPONSE COSTS

51. Settling Defendant shall pay to the United States \$50,000.00. Settling Defendant will make this payment in two installments. The first installment will be paid within 60 days of the effective date of this Consent Decree and will be in the amount of twenty-five thousand dollars (\$25,000). The second installment will be paid within one (1) year of the effective date of this Consent Decree and will be in the amount of twenty-five thousand dollars (\$25,000) plus interest that has accrued from the effective date of this Consent Decree. The payments shall be made by mailing a money order, cashier's check, or certified check payable to "EPA Hazardous Substance Superfund" to the following address:

U.S. Environmental Protection Agency - Region 6
Jacksonville Municipal Landfill Superfund Site
P.O. Box 360582M
Pittsburgh, PA 15251

Attn: Collection Officer of Superfund

CERCLA Number ARD980809941 and DOJ Case Number 90-11-3-814 should be clearly typed on the check to ensure credit. Settling Defendant shall send simultaneous copies of the check to the United States as specified in Section XXVII (Notices and Submissions).

52. It is the understanding of the Parties that each Party will incur Future Response Costs in performing their respective activities related to this Consent Decree and as more specifically described in the SOW. It is the intent of the Parties that the activities undertaken by each party, and the Future Response Costs incurred with respect to those activities, be the financial responsibility of the party undertaking that activity. By way of example only, and without limitation, the activities to be undertaken by the Settling Defendant generally consist of obtaining access to the Site, facilitating transportation of waste material from the Jacksonville Municipal Landfill to the Vertac Chemical Corporation facility, providing clean fill material, grading fill material and revegetating the Site, filling Site trenches and low spots, fencing of the Site and providing Site security until the Site is delisted from the National Priorities List, Operation and Maintenance and the placing of restrictions on the use of groundwater at the Site. By way of example only, and without limitation, the activities to be undertaken by EPA generally consist of sampling, excavation and transportation of waste material to the Vertac site, thermal treatment and disposal of this waste material, oversight and five year review, and may include

activities related to delisting the Site. The foregoing provisions regarding each Party's responsibility for Future Response Costs are specifically subject to the reservations contained in Paragraphs 81, 82 and 84, and are further subject to the provisions of Paragraph 85. In the event that EPA performs any portion of the Work that is the responsibility of the Settling Defendant under the terms of this Consent Decree and incurs Future Response costs, pursuant to Paragraph 85, Settling Defendant shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan so incurred by the United States. In this event, the United States will send Settling Defendant a bill requiring payment that includes a Cost Documentation Management System (CDMS) Report, which includes all direct and indirect costs incurred by EPA, DOJ or their contractors in performing the Work. Settling Defendant shall make payment within 30 days of Settling Defendant's receipt of a bill requiring payment, except as otherwise provided in Paragraph 53. The Settling Defendant shall make any payments required by this Paragraph in the manner described in Paragraph 51.

53. Settling Defendant may contest payment of any Future Response Costs under Paragraph 52 if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant

to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 51. Simultaneously, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within 30 days of the resolution of the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 51. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States in the manner described in Paragraph 51. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

54. In the event that the payments required by Paragraph 51 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 52 are not made within 30 days of the Settling Defendant's receipt of the bill, Settling Defendant shall pay interest on the unpaid balance at the rate

established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on Past Response Costs shall begin to accrue on the effective date of the Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Settling Defendant's receipt of the bill. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to make timely payments under this Section.

XVIII. INDEMNIFICATION AND INSURANCE

55. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of the Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Further, the Settling Defendant agrees to pay the United States all costs it incurs including, but not limited to, attorneys fees and other

expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States.

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

57.a. No later than 15 days before commencing any on-site Work, Settling Defendant shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 47.b of Section XV (Certification of Completion) comprehensive general liability and automobile insurance with limits of two (2) million dollars, combined single limit naming as insured the United States. In addition, for the duration of this Consent Decree, Settling Defendant shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendant shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Settling Defendant demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

b. As an alternative to comprehensive general liability and automobile insurance in the amounts stated in paragraph 57.a

001354

above, Settling Defendant may elect to demonstrate, to the EPA's satisfaction, that it is self-insured. In this context, "self-insured" shall mean that the Settling Defendant has the ability to satisfy claims made against it that would otherwise be covered under standard form comprehensive general liability and automobile insurance policies. Such demonstration should include financial information from the Settling Defendant, including, but not limited to, information similar to that which is to be submitted to satisfy paragraph 45 of this Consent Decree. Such demonstration may also include information regarding the Settling Defendant's procedures for handling and paying claims, information regarding excess insurance, or information establishing that the Settling Defendant is afforded immunity from liability by virtue of state law or otherwise. The information submitted under this paragraph, taken as a whole, must be sufficient to demonstrate Settling Defendant's ability to satisfy claims made against it. If Settling Defendant seeks to demonstrate that it is self-insured, it shall resubmit statements conveying the information required by this paragraph annually, on the anniversary of the effective date of this Consent Decree, until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 47.b of Section XV (Certification of Completion).

XIX. FORCE MAJEURE

58. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the

Settling Defendant or of any entity controlled by Settling Defendant, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Requirements.

59. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region 6, within forty-eight (48) hours of when Settling Defendant first knew or should have known that the event might cause a delay. Within five (5) days thereafter, Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken

to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendant shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendant from asserting any claim of force majeure for that event. Settling Defendant shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

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

majeure event, EPA will notify the Settling Defendant of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

61. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendant complied with the requirements of Paragraphs 58 and 59, above. If Settling Defendant carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

62. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to

enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

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

64. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under paragraph 65 or 66.

b. Within fourteen (14) days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling

Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 65 or 66.

c. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 65 or 66, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 65 and 66.

65.a. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of response actions performed pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow

any dispute by Settling Defendant regarding the validity of the ROD's provisions.

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

c. The Director of the Hazardous Waste Management Division, EPA Region 6, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 65.a. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 65.c. and d.

d. Any administrative decision by EPA pursuant to Paragraph 65.b. shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendant with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

e. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Hazardous Waste Management

Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 65.a.

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

b. Following receipt of Settling Defendant's statement of position submitted pursuant to Paragraph 64, the Hazardous Waste Management Division Director will issue a final decision resolving the dispute. The Hazardous Waste Management Division Director's decision shall be binding on the Settling Defendant unless, within 10 days of receipt of the decision, the Settling Defendant files with the Court and serves on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's notice of judicial appeal.

c. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

67. The invocation of formal dispute resolution procedures under this Section shall not of itself extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 76. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

68. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 69, 70, 71 and 72 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendant shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of

law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

001363

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

Penalty Per Violation
Per Day

Period of Noncompliance

\$1,000
\$2,000
\$3,000
\$5,000

days 1-7
days 8-14
days 15-21
over 21 days

b. i. Failure to submit the Remedial Action Work Plan; or

ii. Failure to begin or complete remedial actions as required by the schedule adopted in the Remedial Action Work Plan as set forth in Paragraph 12.b, Section VI. (Performance of the Work by Settling Defendant)

70. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate reports or other written documents, other than those

reports or documents covered in Paragraph 69.b. above:

Penalty Per Violation
Per Day

\$250
\$500
\$1,000

Period of Noncompliance

days 1-7
days 8-14
over 14 days

71. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 85 of Section XXII (Covenants Not to Sue by Plaintiff), Settling Defendant shall be liable for a stipulated penalty in the amount of \$60,000, and this stipulated penalty shall be in addition to any future response costs for which the Settling Defendant is liable under Paragraph 85.

72. The following stipulated penalties shall be payable per violation per day to the United States for each failure to meet any requirement, condition or term of this Consent Decree or Appendices (except for those activities covered in Paragraphs 69, 70 and 71 above):

Penalty Per Violation
Per Day

\$500
\$1,000
\$2,000

Period of Noncompliance

days 1-7
days 8-14
over 14 days

73. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein

shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

75. All penalties owed to the United States under this section shall be due and payable within 60 days of the Settling Defendant's receipt from EPA of a demand for payment of the penalties, unless Settling Defendant invoke the Dispute Resolution procedures under Section XX (Dispute Resolution). All payments under this Section shall be made by mailing a money order, cashier's check, or certified check payable to "EPA Hazardous Substances Superfund," to the following address:

U.S. Environmental Protection Agency - Region 6
Jacksonville Municipal Landfill Superfund Site
P.O. Box 360582M
Pittsburgh, PA 15251

Attn: Collection Officer of Superfund

CERCLA Number ARD980809941 and DOJ Case Number 90-11-3-814 should be clearly typed on the check to ensure credit. Settling Defendant shall send simultaneous notices of such payments, including copies

money order, cashier's check, or certified check paid pursuant to this Section, and any accompanying transmittal letter(s), to the United States as provided in Section XXVII (Notices and Submissions). Your adherence to these procedures will ensure proper credit is given when penalties are received.

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

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

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

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

c. If the District Court's decision is appealed by any Party, Settling Defendant shall pay all accrued penalties Determined by the Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the

Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that they prevail.

78. a. If Settling Defendant fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as late charges and interest. Settling Defendant shall pay interest on the unpaid balance, which interest shall begin to accrue on the date of demand made pursuant to Paragraph 75 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The due date is the date or dates specified in this Consent Decree for payment unless Settling Defendant invokes dispute resolution. If dispute resolution is invoked, for the purposes of interest calculation, the due date is the date of the final resolution of the dispute.

b. If the payment is overdue, the United States will also impose a late-payment handling charge of \$15, with an additional delinquent notice charge of \$15 for each subsequent 30-day period. Finally, the United States will apply a 6 percent per annum penalty on any principal amount not paid within 90 days of the due date. Other penalties for failure to make a timely payment may also apply.

c. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the

United States to seek any other remedies or sanctions available by virtue of Settling Defendant's violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

79. No payments made under this Section shall be tax deductible for Federal tax purposes.

XXII. COVENANTS NOT TO SUE BY PLAINTIFF

80. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under the terms of the Consent Decree, and except as specifically provided in Paragraphs 81, 82, and 84 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA or Section 7003 of RCRA relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 51 of Section XVII (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 47.b of Section XV (Certification of Completion). These covenants not to sue are conditioned upon the complete and satisfactory performance by Settling Defendant of its obligations under this Consent Decree. These covenants not to sue

extend only to the Settling Defendant and do not extend to any other person.

001369

81. United States' Pre-certification reservations.

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

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

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

82. United States' Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to

compel Settling Defendant (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to certification of completion of the Remedial Action:

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

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

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

84. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those

expressly specified in Paragraph 80. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including but not limited to, the following:

- (1) claims based on a failure by Settling Defendant to meet a requirement of this Consent Decree;
- (2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;
- (3) liability for damages for injury to, destruction of, or loss of natural resources;
- (4) liability for response costs that have been or may be incurred by the U.S. Fish and Wildlife Service or other Branch, Section, Bureau or Division of the U.S. Department of the Interior;
- (5) criminal liability; and
- (6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action.

85. In the event EPA determines that Settling Defendant has failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute

EPA's determination that the Settling Defendant failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendant shall pay pursuant to Section XVII (Reimbursement of Response Costs).

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

XXIII. COVENANTS BY SETTLING DEFENDANT

87. Settling Defendant hereby covenants not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, any claim against any department, agency or instrumentality of the United States Under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site. However,

the Settling Defendant reserves, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendant plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

88. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

89. With regard to claims for contribution against Settling Defendant for Matters Addressed in this Consent Decree, the Parties

hereto agree that the Settling Defendant is entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

90. The Settling Defendant agrees that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim. The Settling Defendant also agrees that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendant shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

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

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

001375

XXV. ACCESS TO INFORMATION

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

93. a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded

the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendant.

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

94. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical,

monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

001377

XXVI. RETENTION OF RECORDS

95. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 48.b of Section XV (Certification of Completion), Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 48.b of Section XV (Certification of Completion), Settling Defendant shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

96. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendant shall deliver

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

97. Settling Defendant hereby certifies that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXVII. NOTICES AND SUBMISSIONS

98. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # _____

and

Director, Hazardous Waste Management Division
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, 12th floor
Dallas, TX 75202

As to EPA:

Kathleen Aisling
EPA Project Coordinator
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, 12th floor
Dallas, TX 75202

Mel McFarland
Assistant Regional Counsel
United States Environmental Protection Agency
Region 6
1445 Ross Avenue, 12th floor
Dallas, TX 75202

001380

As to the Settling Defendant:

Duane Reel
City Engineer
Settling Defendant's Project Coordinator
P.O. Box 126
Jacksonville, Arkansas 72076

XXVIII. EFFECTIVE DATE

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

XXIX. RETENTION OF JURISDICTION

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

XXX. APPENDICES

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

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description of the Site.

001381

XXXI. COMMUNITY RELATIONS

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

XXXII. MODIFICATION

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

104. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendant, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendant.

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

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXXIV. SIGNATORIES/SERVICE

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

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

110. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree.

Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.


SO ORDERED THIS 16th DAY OF June, 1994.

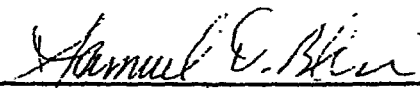
/s/ ELSIJANE T. ROY
United States District Judge

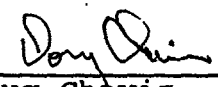
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. City of Jacksonville, relating to the Jacksonville Municipal Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 4/3/84


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



Samuel D. Blesi
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530


Doug Chavis
Assistant United States Attorney
Eastern District Arkansas
U.S. Department of Justice
P. O. Box 869
Little Rock, AR 72203

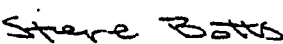
Jacksonville Municipal Landfill Superfund Site

FOR THE UNITED STATES OF AMERICA

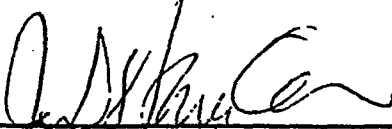
001386



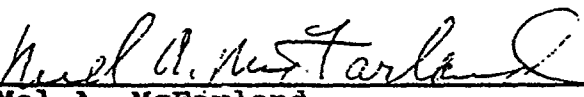
Steven A. Herman
Assistant Administrator for
Enforcement
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460



Steve Botts
Office of Enforcement
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460



Jane N. Saginaw
Regional Administrator,
Region 6
U.S. Environmental Protection
Agency
1445 Ross Avenue, 12th floor
Dallas, TX 75202



Mel A. McFarland
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region 6
1445 Ross Avenue, 12th floor
Dallas, TX 75202

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. City of Jacksonville, relating to the Jacksonville Municipal Landfill Superfund Site.

001387

FOR THE CITY OF JACKSONVILLE

Date: 12-20-93

Tommy Swaim
Tommy M. Swaim
Mayor, City of Jacksonville
P.O. Box 126
Jacksonville, Arkansas 72076

Date: 12-20-93

Lula M. Leonard
Lula M. Leonard
City Clerk, City of Jacksonville
P. O. Box 126
Jacksonville, Arkansas 72076

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

Name: Tommy Swaim
Title: Mayor, City of Jacksonville
Address: P. O. Box 126, Jacksonville, Arkansas 72076

REMEDIAL ACTION STATEMENT OF WORK
JACKSONVILLE LANDFILL SUPERFUND SITE
JACKSONVILLE, ARK

Table of Contents

	Page
I. INTRODUCTION	
A. PURPOSE OF THE STATEMENT OF WORK.....	1
B. SITE DESCRIPTION.....	1
C. OVERVIEW.....	1
D. PERFORMANCE REQUIREMENTS.....	2
E. REMEDIAL DESIGN (RD).....	2
F. REMEDIAL ACTION (RA).....	3
G. OPERATION AND MAINTENANCE (O & M).....	3
II. ROLE OF EPA	
A. EPA APPROVAL.....	4
III. SETTling DEFENDANT'S KEY PERSONNEL	
A. DESIGNATION OF PROJECT COORDINATOR.....	4
B. REVIEW AND APPROVAL OF SUPERVISING CONTRACTOR.....	5
C. THE REMEDIAL ACTION QUALITY ASSURANCE OFFICIAL.....	7
D. REVIEW AND APPROVAL OF REMEDIAL ACTION CONSTRUCTOR.....	7
IV. WORK TO BE PERFORMED	
A. REMEDIAL ACTION WORK PLAN.....	7
B. PRE-CONSTRUCTION CONFERENCE.....	13
C. CONSTRUCTION OVERSIGHT.....	13
V. COMPLETION	
A. CERTIFICATION OF COMPLETION OF REMEDIAL ACTION.....	14
B. REMEDIAL ACTION REPORT.....	15
C. CERTIFICATION OF COMPLETION OF WORK.....	16

REMEDIAL ACTION STATEMENT OF WORK
JACKSONVILLE LANDFILL SUPERFUND SITE
JACKSONVILLE, AR

001389

I. INTRODUCTION

A. PURPOSE OF THE STATEMENT OF WORK

This Statement of Work (SOW) sets forth the requirements for implementation of the Remedial Action and Operation and Maintenance (O & M) at the site, as defined in Section IV, Paragraph 4 of the Consent Decree.

B. SITE DESCRIPTION

The site shall refer to the definition of "site" as provided in the Consent Decree and as described more fully in the Record of Decision (ROD).

C. OVERVIEW:

The EPA will excavate contaminated site material from the landfill and transport this waste to the Vertac site for temporary storage. This waste will subsequently be thermally treated at the Vertac site.

The Settling Defendant will help gain site access, facilitate the waste transport to the Vertac site, fill excavated areas, eliminate site trenches and low spots, regrade the site, and as part of long-term operation and maintenance, conduct necessary analytical ground water sampling and maintain the site's fencing/security until the site is delisted from the National Priorities List.

D. PERFORMANCE REQUIREMENTS

Performance Requirements shall include standards of control, quality criteria, and other substantive requirements, criteria, or limitations set forth in the Record of Decision. Once these requirements have been met, the EPA will consider the Remedial Action to have been completed.

These Performance Requirements are as follows:

- 1) All excavated areas will be backfilled so that they are covered with a minimum of 12 inches of clean soil.
- 2) All surface soils with 2,3,7,8 TCDD equivalents less than or equal to 10 ppb and cumulative HI values greater than .3 will also be covered with 12 inches of clean fill.
- 3) The site will be regraded so that all ditches, ponds, and low areas are filled so that there is positive drainage off-site with no ponding.
- 4) The site fence will be secured.
- 5) The regraded areas will be reseeded with native grasses.

Completion of the remedial action will be based on the Settling Defendant's demonstration that the Performance Requirements have been consistently attained and maintained.

E. REMEDIAL DESIGN

Because the remedial actions to be performed by the Settling Defendant are not complex, EPA will provide the specifications

necessary to complete the work. These specifications will be incorporated into the Remedial Action Work Plan.

F. REMEDIAL ACTION (RA)

The RA process begins with the preparation of the Remedial Action Work Plan which sets forth plans and schedules for the actual implementation of the remedy. The Remedial Action Work Plan is to be prepared by the Settling Defendant and shall address the items set forth in Section IV Paragraph A of this SOW, and Section IV of the Consent Decree. The RA process is the implementation phase of site cleanup. Remedial Action ends when all requirements of Section XV, Paragraph 48 of the Consent Decree, "Completion of the Remedial Action," have been met. Completion of the Remedial Action does not imply certification of Completion of Work as set forth in Section XV, Paragraph 49 of the Consent Decree, "Completion of Work."

G. OPERATION AND MAINTENANCE (O&M)

O&M begins after the remedy has achieved the Remedial Action objectives in the ROD and the Performance Requirements of this SOW. The O&M plan shall be developed by the Settling Defendant and must discuss site inspections, routine maintenance, site security and include information pertaining to ongoing water well sampling and analysis. This will include sampling protocol, chain-of-custody procedures, sampling schedule, analytical analyses to be performed, etc.

The O&M process shall begin upon completion of the RA and shall include all activities described in the O&M Plan (Section IV, Paragraph A 11 of this SOW), the scope of which is to describe activities required to maintain the effectiveness of the Remedial Action.

II. ROLE OF EPA

A. EPA APPROVAL

Approval of submittals to EPA is administrative in nature to allow the Settling Defendant to proceed to the next step in implementing the site remedy. It does not imply any warranty of performance or that the remedy, when constructed, will meet Performance Requirements or will function properly and be accepted. Pursuant to Section XII of the Consent Decree, EPA retains the right to disapprove submittals during Remedial Action. This action may be taken for contractors, plans and specifications, processes, and other submittals within the context of the Consent Decree.

III. SETTLING DEFENDANT'S KEY PERSONNEL

A. DESIGNATION OF PROJECT COORDINATOR

Pursuant to Section XIII of the Consent Decree, the Settling Defendant shall, within 20 days of lodging of the Consent Decree, submit in writing to EPA the name, title, and qualifications of their proposed Project Coordinator. Pursuant to Section XII of the Consent Decree and Section II of this SOW, the Project Coordinator shall be subject to

disapproval by EPA. The Project Coordinator is to be used in carrying out the overall coordination and management of all activities required under the Consent Decree. The Settling Defendant also will submit a list of all other acceptable candidates considered during the Project Coordinator selection. The Project Coordinator may be a member of the Settling Defendant's staff or an independent contractor. The Project Coordinator shall not be an attorney for the Settling Defendant in this matter.

B. REVIEW AND APPROVAL OF SUPERVISING CONTRACTOR

Pursuant to Section VI of the Consent Decree, the Settling Defendant shall submit to EPA the name, title, and qualifications of their proposed Supervising Contractor within 10 days of the lodging of the Consent Decree. Pursuant to Section XII of the Consent Decree and Section II of this SOW, the Supervising Contractor shall be subject to disapproval by EPA. The Supervising Contractor may come from within the ranks of the Settling Defendant's own staff or through a contractual relationship with a private consulting entity. The Supervising Contractor shall be experienced in the actions to be taken by the Defendant at this specific site. The Supervising Contractor may assume the role(s) of Project Coordinator, Remedial Action Constructor, and Quality Assurance Official with the following exception: The Supervising Contractor shall not assume both the role of Remedial Action Constructor and Quality Assurance Official.

However, for those activities where the Defendant is both the Supervising Contractor and the Remedial Action Constructor, then EPA will provide the Quality Assurance Official.

The Settling Defendant shall demonstrate to EPA the proposed Supervising Contractor's professional reputation; professional registration; and qualifications specifically required for the project; sufficient capacity in professional, technical, and support staff to accomplish the project within the required schedule; and sufficient business background and financial resources to provide uninterrupted services throughout the life of the project.

The information submitted concerning the Supervising Contractor will include a written statement of qualifications in sufficient detail to allow EPA and the State to make a full and timely evaluation.

On an annual basis, EPA will meet with the Settling Defendant and discuss the performance and capabilities of the Supervising Contractor. When performance is not satisfactory, the Settling Defendant shall take appropriate action to correct the deficiency. If problems continue, the Settling Defendant, at EPA's request, will retain the services of a new Supervising Contractor.

C. THE REMEDIAL ACTION QUALITY ASSURANCE OFFICIAL

Oversight by the Remedial Action Quality Assurance Official (QAO) is used to provide confirmation/assurance to the Settling Defendant and EPA that the selected remedy is constructed to meet project requirements. The QAO will ensure that construction is completed in accordance with the design and ROD by selectively testing and inspecting the work of the Remedial Action Constructor.

The QAO may come from within the ranks of the Settling Defendant's own staff, the Remedial Supervising Contractor organization, or through a separate contractual relationship with a private consulting entity. The EPA, at the request of the Settling Defendant, will conduct a review of the qualifications of the QAO.

D. REVIEW AND APPROVAL OF REMEDIAL ACTION CONSTRUCTOR

The EPA, at the request of the Settling Defendant, will conduct a review of the Remedial Action Constructor based on professional reputation, previous experience in the type of construction activities to be implemented, and demonstrated capability to perform the required construction activities.

IV. WORK TO BE PERFORMED

A. REMEDIAL ACTION WORK PLAN

Pursuant to Section VI, Paragraph 12 of the Consent Decree, the Settling Defendant shall submit within ____ days, the

Remedial Action Work Plan for EPA review, in consultation with the State. Pursuant to Section XII of the Consent Decree and Section II of this SOW, the Remedial Action Work Plan is subject to EPA disapproval. The Remedial Action Work Plan will describe the Settling Defendant's plan for implementation of the Remedial Action within the terms and conditions of the Consent Decree and the Statement of Work. It will contain at a minimum those elements indicated in Section VI, Paragraph 12b of the Consent Decree, as well as:

1. A description of the work and field operations.
2. A schedule of Remedial Action activities.
3. A plan for facilitating waste transport by EPA to the Vertac site. This will include a map showing the transportation route to the Vertac site and a schedule of allowable times for transport. The plan will further describe the security, traffic control, or other types of assistance the Defendant will provide to ensure the safe, unhindered transportation of the contaminated material to the Vertac site.
4. Final plans and specifications for backfilling excavations, placing soil cover over specified areas, and regrading the site.

5. A plan for providing access to the site for the RPM, State Officials, EPA Oversight Officials, and other agencies with jurisdictional interest pursuant to Section X of the Consent Decree.
6. A Community Relations Plan (CRP) will be provided by the Settling Defendant to EPA, which will be used to promote active communication within the community. The plan will describe the meeting place(s) and assistance, both of which are to be provided by the Defendant to EPA for conducting public workshops. One workshop will be conducted to inform local citizens of the actions to be taken, and others will be conducted at construction completion and during O&M. Pursuant to Section XXXI of the Consent Decree, the EPA will determine the appropriate role for the Settling Defendant under the plan.
7. Identification of the Remedial Action Team for construction management, including the key personnel, descriptions of duties, and lines of authority.
8. Identification of the process for selecting the Remedial Action Constructor. This will also describe which construction is to be accomplished by the Settling Defendant's "in-house" resources, and which through a construction contract.

9. A clear and concise description of the roles, relationships, and assignment of responsibilities among the Settling Defendant, Project Coordinator, Remedial Action Quality Assurance Official, Supervising Contractor and Remedial Action Constructor.
10. A procedure to include EPA review of construction changes that may impact the implementation of the ROD.
11. An Operation and Maintenance Plan (O & M) - This plan shall include details of the sampling and data gathering methods to be used during well monitoring. It shall help determine the nature and extent of continued monitoring and will also discuss continued site security and maintenance. More specifically, it must minimally address the following:
 - a) Procedures for conducting sampling of the four deep, three shallow, and three existing residential wells. The four deep and three residential wells are to be sampled at a minimum of once per year, and the three shallow wells are to be sampled once every five years. All wells are to be first sampled upon EPA certification of completion of the Remedial Action. Water well sampling procedures are subject to EPA approval.

All analytical work performed on the wells must follow accepted EPA Quality Assurance/Quality Control procedures and guidance. The name and qualifications of the lab(s) selected to perform the analytical work shall be submitted to EPA by the Settling Defendant. The lab(s) shall be subject to disapproval by EPA. Analyses will be performed for Toxic Compound List organics and inorganics, herbicides and pesticides.

- b) Procedures for reporting to EPA the sampling and analyses results. The Settling Defendant will prepare, upon completion of each round of well monitoring (within 60 days of receiving the final analytical data), a report detailing the sampling procedures used and the analytical results. All reports will consider new and past (RI/FS) information collected and will attempt to identify any patterns or trends.

EPA will review these reports and may provide comments to the Settling Defendant. The Settling Defendant will, upon EPA request, revise these reports to EPA's satisfaction.

The EPA's Record of Decision calls for 30 years of ground water monitoring. This may be modified, as

can the compounds to be monitored for, depending on the results of the ground water monitoring. Such modifications are subject to EPA approval.

All sampling and analytical work will be evaluated five years after the date of Certification of Remedial Action Completion to determine the need to continue the monitoring. If the site is no longer considered a potential threat to the ground water, monitoring will end. This is contingent upon EPA's approval. (This review will not necessarily take the place of the statutorily mandated 5-Year Review evaluating the effectiveness of the selected Remedial Action.)

- c) Ground Water Restrictions. Subject to a determination by EPA, and based upon the ground water monitoring results, the Settling Defendant will notify adjacent landowners/homeowners of any potential ground water contamination threat.
- d) Site Security. The Settling Defendant will maintain the integrity of the site security fence and restrict site access to approved personnel only. Repairs will be made as necessary.
- e) Site Maintenance. The Settling Defendant will

inspect and maintain the site's soil cover. Any low spots or site depressions that hold water will routinely be graded to promote off-site drainage.

B. PRE-CONSTRUCTION CONFERENCE

Prior to the start of construction, the Settling Defendant will schedule and initiate a pre-construction conference. The participants will include all parties involved in the Remedial Action, including but not limited to the Settling Defendant and its representatives. Participants also will include the Project Coordinator, the EPA Remedial Project Manager and any designated EPA Oversight Officials, all selected subcontractors and representatives of the State.

The purpose of the pre-construction conference will be to establish relationships among all parties involved in the Remedial Action, including lines of communication and authority and to describe Remedial Action activities.

C. CONSTRUCTION OVERSIGHT

During implementation of the Remedial Action, the Settling Defendant will be responsible for assuring access for the RPM, State Officials, and Oversight Officials to the site, to all land and facilities required for monitoring compliance with the Consent Decree.

V. COMPLETION

A. CERTIFICATION OF COMPLETION OF REMEDIAL ACTION

In accordance with the Remedial Action schedule developed under Section IV, paragraph A of this SOW, the Settling Defendant shall request the scheduling of a pre-certification inspection, pursuant to Section XV of the Consent Decree. Pre-certification inspection participants will include the EPA Remedial Project Manager, designated EPA Oversight Officials and other agencies with a jurisdictional interest in attendance (e.g., the State). The purpose of the inspection(s) is to determine whether all aspects of the Remedial Action have been implemented at the site, and whether the remedy is operational and meets the Performance Requirements. If any items have not been completed, the Settling Defendant will develop a punch list specifying the outstanding items which require completion or correction before acceptance of work.

After completion of the pre-certification inspection, and completion of the punch list items, the Settling Defendant shall submit to EPA for review a written request for Certification of Completion of the Remedial Action, pursuant to Sections XII and XV of the Consent Decree. This request will include a description of how the Performance Requirements have been met. EPA will notify the Settling Defendant of any corrective actions necessary to satisfactorily complete the Remedial Action and achieve Performance Requirements if

deficiencies are found to exist. EPA may also specify a schedule for completing any corrective actions.

A certification inspection shall be conducted when all corrective action items have been completed to the satisfaction of EPA. All items specified by EPA as requiring correction shall be reinspected, and all tests that were originally unsatisfactory shall be conducted again. If EPA concludes that the Remedial Action has been fully performed in accordance with the Consent Decree and that Performance Requirements have been attained in accordance with Section I Paragraph D of this Statement of Work, certification will be granted in writing by EPA.

B. REMEDIAL ACTION REPORT

Within 120 days of receiving the EPA certification of the completion of the Remedial Action, the Settling Defendant shall prepare and submit to EPA a Remedial Action Report which certifies that all items contained in the Consent Decree and any incorporated documents (e.g., plans and specifications) have been completed. The report shall include a construction chronology, a list of construction modifications, pre-certification and certification inspection corrections and documentation sustaining that Performance Requirements have been met.

C. CERTIFICATION OF COMPLETION OF WORK

Work at a site shall be considered complete when all Remedial Actions required to attain and maintain the protection of human health and the environment are complete, and all operation and maintenance activities are complete.

Pursuant to Section XV, Paragraph 49 of the Consent Decree, within 90 days after EPA concludes that all phases of work have been fully performed, the Settling Defendant shall submit a written request for Certification of Completion of Work by a registered professional engineer stating that all work has been completed in full satisfaction of the Consent Decree and this Statement of Work.

If, after review of the report by EPA and consulting with the State, EPA determines that any portion of the work is not complete, EPA will inform the Settling Defendant in writing of the activities required to complete the work. EPA will provide a schedule for the performance of the activities consistent with the Consent Decree and this SOW or require the Settling Defendant to submit a schedule to EPA for approval.

If EPA concludes, based on the initial or subsequent request for Certification of Completion of Work by the Settling Defendant and after reasonable opportunity for review and

comment by the State, that work has been fully performed in accordance with the Consent Decree, EPA will so notify the Settling Defendant in writing.

001405