



declaration of the liability of DuPont for further response costs; and (4) such other relief as the Court finds appropriate.

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 Iowa (the "State") on June 5, 1991, that it intended to enter into 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 decree.

D. In accordance with section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of the Interior on April 24, 1991, that it intended to enter into negotiations with potentially responsible parties regarding the release of hazardous substances that may have injured natural resources under Federal trusteeship. EPA encouraged the Department of the Interior to participate in the negotiation of this Consent Decree.

E. Defendant DuPont ("Settling Defendant") does not admit any liability to the United States arising out of the transactions or occurrences alleged in the complaint; nor does the Settling Defendant admit, accept, agree to or acknowledge any allegations in the Complaint or the findings of fact, conclusions of law or determinations set forth in this Consent Decree and specifically reserves the right to contest all such allegations, findings, conclusions or determinations in any other proceeding regarding the Site, other than actions brought by EPA or the

State to enforce this Consent Decree.

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 August 30, 1990, 55 Fed. Reg. 169.

G. In response to a release or a substantial threat of a release of a hazardous substance at or from the Site, and pursuant to a Unilateral Administrative Order issued by EPA on July 3, 1989, and amended on February 7, 1990, DuPont commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.68;

H. DuPont completed the Remedial Investigation ("RI") Report and the Feasibility Study ("FS") Report on January 16, 1991.

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 on April 11, 1991, in the Fort Madison, Iowa Daily Democrat, a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record on which the Regional Administrator based the selection of the response action.

J. The decision by EPA selecting the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on May 28, 1991, on which the State had a

reasonable opportunity to review and comment and on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the ROD was published in the Fort Madison, Iowa, Daily Democrat on June 10, 1991, in accordance with Section 117(b) of CERCLA. EPA and the Settling Defendant agree that the remedial action plan approved by EPA and embodied herein is protective of the the public health and the environment and is consistent with CERCLA and the NCP.

K. The major components of the remedy embodied in the ROD include: stabilizing and solidifying the contaminated soil and covering it with clean soil and vegetation. No further action is necessary for the ground water at the Site.

L. Based on the information presently available to EPA, it believes that all activities required under this Consent Decree (the "Work") the Work will be properly and promptly conducted by the Settling Defendant.

M. The United States, EPA, and DuPont recognize, and the Court by entering this Consent Decree finds, that 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 nor this Court's jurisdiction to enter and enforce this Consent Decree. However, nothing herein shall be construed as a waiver of the Settling Defendant's right to seek modification of 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 any Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Defendant's rights, responsibilities, or releases received under this Consent Decree.

3. Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing 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. 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.

"Future Response Costs" shall mean all documented costs, including, but not limited to, indirect costs, that the United States incurs after August 1, 1991, in overseeing the Work, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section X (Access), Section VIII (Periodic Review), and the costs of reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing or enforcing this Consent Decree. Future Response Costs shall also include all costs, including indirect costs, incurred by the United States in connection with the Site between August 1, 1991, and the effective date of this Consent Decree, as well as all costs attributable to the United States Department of Justice incurred after May 1, 1991.

"IDNR" shall mean the Iowa Department of Natural Resources and any successor departments or agencies of the State.

"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.

"Parties" shall mean the United States, the Environmental Protection Agency 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 August 1, 1991, and that are not inconsistent with CERCLA and the NCP.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations, set forth in the ROD, Paragraph 13 of this Consent Decree, and implemented in the SOW.

"Plaintiff" shall mean the United States.

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on May 28, 1991, by the Regional Administrator, EPA Region VII, and all attachments thereto.

"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).

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendant to implement the final plans and specifications submitted by the Settling Defendant pursuant to the Remedial Design Work Plan and approved by EPA.

"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 to be undertaken by the Settling Defendant to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document submitted by the Settling Defendant pursuant to Paragraph 11.a of this Consent Decree and described more fully in Paragraph 11.b.

"Section," when used in reference to this document, shall mean a portion of this Consent Decree identified by a Roman numeral and including one or more paragraphs.

"Settling Defendant" shall mean E. I. du Pont de Nemours and Company.

"Site" shall mean the County Road X23 Superfund site, located approximately 3.5 miles south of West Point, in rural Lee County, Iowa. The Site consists of two subsites, the Baier Subsite and the McCarl Subsite, located within 1.5 miles of each

other. The Baier subsite encompasses approximately 3.5 acres and is accessible by County Road X23. The McCarl subsite, which consists of approximately 1.25 acres, is located along Chalkridge Road, approximately one-quarter mile east of County Road X23, as described in the Record of Decision.

"State" shall mean the State of Iowa.

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

"Supervising Contractor" shall mean the contractor retained by the Settling Defendant to carry out the Work under this Consent Decree and approved by EPA pursuant to Paragraph 10.

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

"Work" shall mean all activities 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 and welfare and the environment from releases or threatened releases of Waste Material from the Site by the design and implementation of the Remedial Action and

Operation & Maintenance at the Site by the Settling Defendant and to reimburse the Plaintiff's response costs.

6. Commitments by Settling Defendant

a. Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, including but not limited to, the SOW and all standards, specifications and schedules set forth in or developed 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.

b. The obligations of Settling Defendant to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several.

7. Compliance With Applicable Law

All activities undertaken by 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 United States has determined that 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 the NCP, no permit shall be required for any portion of the Work conducted entirely on the Site. Where any off-site portion of the Work requires a federal or state permit or approval, Settling Defendant shall timely submit applications and take all other actions necessary to obtain all such permits or approvals.

b. Section XIX (Force Majeure) of this Consent Decree shall govern 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 fifteen (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, Lee County, State of Iowa. Thereafter, each deed, title, or other instrument of conveyance for property included in the Site should contain a notice stating that the property is subject to this Consent Decree and any lien retained by the United States 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) and the implementation of institutional controls under Paragraph D of Section III of the SOW 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 fifteen (15) days after the entry of this Consent Decree, the Settling Defendant shall record at the Registry of Deeds, Lee County, Iowa, or other office where land ownership and transfer

records are maintained for the property, a notice of obligation to provide access and related covenants in the form set forth in Appendix C. Each subsequent deed to any such property included in the Site should 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 thirty (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 shall continue to be met by the Settling Defendant. In addition, if the United States approves, the grantee may meet the Settling Defendant's obligations under this Consent Decree. In no event shall the conveyance of an interest in property which 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 Contractor**

a. All aspects of the Work to be performed by Settling Defendant or its contractors pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Additional Response Actions), VIII (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 approval by EPA after reasonable opportunity for review and comment by the State. Within thirty (30) days after the lodging of this Consent Decree, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. If at any time thereafter the Settling Defendant propose to change a Supervising Contractor, the Settling Defendant shall give such notice to EPA and shall obtain approval from EPA after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs or supervises any Work under this Consent Decree.

b. EPA shall expeditiously notify the Settling Defendant in writing of its approval or disapproval of a proposed Supervising Contractor. If EPA disapproves of the selection of any contractor as Supervising Contractor, the Settling Defendant shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to Defendant within thirty (30) days of receipt of EPA's disapproval of the contractor previously selected. EPA shall provide written notice of the names of the contractor(s) that it approves. The Settling Defendant may select any approved contractor from that list and shall notify EPA of the name of the contractor selected within thirty (30) days of EPA's designation of approved contractors. If EPA fails to provide written notice of its

approval or disapproval of the names on the list 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, the Settling Defendant may seek relief under the provisions of Section XIX (Force Majeure) hereof.

11. Remedial Design

a. Within 30 days of lodging of this Consent Decree, the Settling Defendant shall submit to EPA a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon its approval by EPA shall be incorporated into and become enforceable under this Consent Decree. Within 30 days of lodging of this Consent Decree, the Settling Defendant shall submit to EPA a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including but not limited to 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan including but not limited to a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section IX (Quality Assurance, Sampling and Data Analysis));

(2) a treatability study, if needed; (3) a preliminary design submittal; (4) an intermediate design submittal; (5) a pre-final/final design submittal; and (6) a Construction Quality Assurance Plan. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA, the Settling Defendant shall implement the Remedial Design Work Plan. The Settling Defendant shall submit all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XII (Submissions Requiring Agency Approval).

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) description of treatability studies and the results, if complete; (3) results of additional field sampling; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The intermediate design submittal shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.



f. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications based on Performance Standards established in Paragraph 13 of this Consent Decree; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official ("QA Official") independent of the construction contractor to conduct a quality assurance program during the construction phase of the project.

12. Remedial Action

a. Within 60 days after the approval of the final design submittal, 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, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, the 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 development and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance 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, if any. The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal 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 Approval). Unless otherwise directed by EPA, the Settling Defendant shall not commence physical on-site activities at the Site prior to approval of the Remedial Action Work Plan.

13. Performance Standards. The Work performed by the Settling Defendant pursuant to this Consent Decree shall, at a minimum, achieve the following Performance Standards:

For Soil:

Chromium 150 mg/Kg

Lead 350 mg/Kg

Selenium 10 mg/KG

Cadmium 20 mg/Kg

All contaminants found above these levels shall be stabilized/solidified in accordance with the ROD and the SOW. The Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with this Consent Decree will achieve the Performance Standards and that such compliance shall not foreclose Plaintiff from seeking compliance with all terms and conditions of this Consent Decree including but not limited to the applicable Performance Standards.

14. Prior to any off-site shipment of Waste Material from

the Site to an out-of-state waste management facility, the Settling Defendant shall provide written notification of such shipment of waste material to the appropriate state environmental official in the receiving facility's state and the EPA Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments does not exceed 10 cubic yards.

a. The Settling Defendant shall include in the written notification the following information, where available: (1) the name and location of the facility to which the waste material is to be shipped; (2) the type and quantity of waste materials to be shipped; (3) the expected schedule for the shipment of the waste material; and (4) the method of transportation. The Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipping 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 the state will be determined by the Settling Defendant following the award of the contract for Remedial Action construction. The Settling Defendant shall provide the information required by Paragraph 14 (a) as soon as practical after the award of the contract and before the Waste Material is actually shipped.

## VII. ADDITIONAL RESPONSE ACTIONS

15. In the event that EPA or the Settling Defendant determine that additional response actions are necessary to meet the Performance Standards described in Paragraph 13 of this Consent Decree 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.

16. Within thirty (30) days of receipt of notice from EPA that additional response actions are necessary to meet the Performance Standards or to carry out the remedy selected in the ROD or such longer time specified by EPA, 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.

17. Any additional response actions that Settling Defendant determines are necessary to meet the Performance Standards 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 Settling Defendant in accordance with plans, specifications, and schedules approved by EPA pursuant to Section

XII (Submissions Requiring Agency Approval).

18. Settling Defendant may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary pursuant to this Section VII. Such dispute shall be resolved pursuant to Section XX (Dispute Resolution) of this Consent Decree.

VIII. EPA PERIODIC REVIEW

19. EPA shall conduct reviews at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

20. If required by Sections 113(k)(2) or 117 of CERCLA, Settling Defendant and the public shall be provided with an opportunity to comment on any additional 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 VII, shall determine in writing whether additional response actions are appropriate.

21. If the Regional Administrator, EPA Region VII 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 additional response actions EPA has determined are appropriate. However, the Settling Defendant may invoke the

procedures set forth in Section XX (Dispute Resolution) to dispute EPA's determination that additional response actions are appropriate or the additional response action ordered as being arbitrary and capricious or otherwise not in accordance with law. Such a dispute shall be resolved on the administrative record.

**IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS**

22. Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all environmental treatability, design, compliance and monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans" (QAM-005/80), "Data Quality Objective Guidance" (EPA/540/G87/003 and 004) and subsequent amendments to such guidelines upon notification to Settling Defendant of such amendment by EPA. 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 guidances. If relevant to the proceeding, 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 assure 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 it 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 it for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

23. 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 fourteen (14) days in advance of any sample collection activity. 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. EPA shall notify Settling Defendant not less than seven (7) days in advance of any of its sample collection activity.

24. Within fourteen (14) days of a request by EPA,



Settling Defendant shall submit to EPA three 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.

25. 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

26. Commencing upon the date of lodging of this Consent Decree and continuing until EPA notifies the Settling Defendant pursuant to Paragraph 45 of Section XV (Certification of Completion), the Settling Defendant agrees that the United States, the State, and their representatives, including EPA and its contractors, shall have access at all 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 authorized by or related to CERCLA, RCRA, the NCP, or 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; or

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

27. 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, the State, 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 forty-five (45) days of the date of entry of this Consent Decree, or within forty-five (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 shall, 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, including, but not limited to, attorneys fees and the amount of just compensation and costs, in obtaining access.

28. 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

29. In addition to any other requirement of this Consent Decree, Settling Defendant shall submit to EPA and the State three copies of written monthly progress reports which: (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) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction including, but not limited to, critical

path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; and (f) include any modifications of the work plans or other schedules that Settling Defendants have submitted to EPA or that have been approved by EPA. 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 Certification of Completion of the Remedial Action pursuant to Section XV (Certification of Completion). If requested by EPA, Settling Defendant shall provide periodic briefings for EPA to discuss the progress of the Work.

30. 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), 42 U.S.C. § 11001 et seq., Settling Defendant shall within 24 hours of the on-set of such event notify orally or in writing the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region VII, United States Environmental Protection Agency. These reporting requirements are in addition

to the reporting required by CERCLA Section 103 or EPCRA Section 304. Within twenty (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 thirty (30) days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken to respond thereto.

31. Until EPA notifies Settling Defendant pursuant to Paragraph 46.b of Section XV (Certification of Completion), Settling Defendant shall submit to the Court, and EPA and the State each year, within thirty (30) days of the anniversary of the entry of the Consent Decree, a report setting forth the status of the Work, which shall at a minimum include a statement of major milestones accomplished in the preceding year, a statement of tasks remaining to be accomplished, and a schedule for implementation of the remaining Work. Settling Defendant shall submit three copies of the report to EPA and three copies of the report to the State.

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

33. 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**

34. 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) disapprove, in whole or in part, the submission, notifying Settling Defendant of deficiencies; (c) direct that the Settling Defendant modify the submission; (d) approve the submission upon specified conditions; (e) modify the submission to cure the deficiencies; or (f) any combination of the above. Comments or suggestions by EPA on any submission shall not be construed as disapproval, unless so specified.

35. In the event of approval, approval upon conditions, or modification by EPA, Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only 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.

36. Upon receipt of a notice of disapproval or a notice requiring a modification, Settling Defendant shall, within thirty (30) 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. Notwithstanding the notice of disapproval, Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

37. 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. Subject only to their right to invoke procedures set forth in Section XX (Dispute Resolution), Settling Defendant shall implement any such plan, report, or item as amended or developed by EPA.

38. If, upon the first resubmission or upon any subsequent resubmission, the plan, report, or item is disapproved by EPA, Settling Defendant shall be deemed to be in violation of the provision of this Consent Decree requiring the Settling Defendant to submit such plan, report, or item unless the Settling Defendant: (a) invokes the dispute resolution procedures set forth in Section XX (Dispute Resolution) and exhausts the remedies set forth therein; and (b) this Court concludes that the Settling Defendant has not violated the Consent Decree. 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. Implementation of any portions of the submissions which are not deficient shall not relieve Settling Defendant of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

39. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval by EPA, be deemed to be incorporated in and an enforceable part of this Consent Decree. In the event EPA approves a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved portion shall be deemed to be incorporated in and an enforceable part of this Consent Decree.

#### XIII. PROJECT COORDINATORS

40. Within twenty (20) days of lodging this Consent Decree, Settling Defendant and EPA shall 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 shall be given to the other parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Work. 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.

41. 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 a condition at the Site that causes or threatens a release of Waste Material, that constitutes an emergency situation, or may present an immediate threat to public health or welfare or the environment.

42. EPA's Project Coordinator and the Settling Defendant's Project Coordinator shall confer, at a minimum, on a monthly basis.

#### **XIV. ASSURANCE OF ABILITY TO COMPLETE WORK**

43. Within thirty (30) days of lodging of this Consent Decree, Settling Defendant shall establish and maintain financial security in the amount of \$1,500,000.00 in one of the following forms:

(a) A surety bond guaranteeing performance of the

Work;

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

(c) A trust fund;

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

(e) A demonstration that the Settling Defendant passes the financial test specified in 40 C.F.R. § 265.143(f); or

(f) Internal financial information regarding Settling Defendant's net worth, cash flow, total liabilities, and current rating for most recent bond issuances sufficient to demonstrate to EPA's satisfaction that Settling Defendant has the financial ability to complete the Work.

44. If the Settling Defendant seeks to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 43(d) of this Consent Decree, Settling Defendant shall demonstrate that the guarantor passes the financial test specified in 40 C.F.R. § 265.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee, they or any of them shall resubmit sworn statements conveying the required information annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA, after a reasonable opportunity for review and comment by the

State, determines at any time that the financial assurances provided pursuant to this Paragraph are inadequate, Settling Defendant shall, within thirty (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 43 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

##### 45. Completion of the Remedial Action

a. Within ninety (90) days after Settling Defendant concludes that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendant shall so certify to the United States and shall schedule and conduct a pre-certification inspection to be attended by Settling Defendant and EPA. Such inspection shall be followed by a written report submitted within thirty (30) days of the inspection by a registered professional engineer and the Settling Defendant's Project Coordinator certifying 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 the Settling Defendant or the Settling Defendant's Project Coordinator:

"I certify that, to the best of my knowledge, the information contained in or accompanying this submission is true, accurate and complete."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA shall notify Settling Defendant in writing of the activities that must be undertaken to complete the Remedial Action and achieve the Performance Standards. EPA shall set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or shall 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 Standards have been achieved], EPA shall so certify in writing to Settling Defendant. 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 Plaintiffs). This Certification of Completion shall not be unreasonably withheld by EPA.

Certification of Completion of the Remedial Action does not in any way affect Settling Defendant's remaining obligations under this Consent Decree including, but not limited to, access, Operation and Maintenance, record retention, indemnification, insurance, and payment of Future Response Costs and penalties.

46. Completion of the Work

a. Within ninety (90) days after Settling Defendant concludes that all phases of the Work (including O & M), with the exception of the payment of Future Response Costs associated with this Paragraph, have been fully performed, Settling Defendant shall so certify to the United States by submitting a written report by a registered professional engineer certifying that the Work, with the exception of the requirements of Section XXVI, 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 the Settling Defendant or the Settling Defendant's Project Coordinator:

"I certify that, to the best of my knowledge, the information contained in or accompanying this submission is true, accurate and complete."

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, with the exception of the requirements of Section XXVI, has not been completed in accordance with this Consent Decree, EPA shall notify Settling Defendant in writing of the activities that must be undertaken to complete the Work. EPA shall set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or shall 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 unless it invokes 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 Work, with the exception of the requirements of Section XXVI has been fully performed in accordance with this Consent Decree, EPA shall so notify the Settling Defendant in writing. This Certification of Completion shall not be unreasonably withheld by EPA.

#### **XVI. EMERGENCY RESPONSE**

47. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material 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 48, 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 Alternative Project Coordinator. If neither of these persons is available, the Settling Defendant shall notify the EPA Emergency Response Unit, Region VII. Settling Defendant shall take such actions in consultation with the EPA's Project Coordinator and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, or 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.

48. 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, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

#### **XVII. REIMBURSEMENT OF RESPONSE COSTS**

49. Within thirty (30) days of the effective date of this Consent Decree, Settling Defendant shall:

a. Pay to EPA \$422,176.40, plus interest on this amount at the rate established pursuant to CERCLA Section 107 from May 16, 1991, to the effective date of this Consent Decree, in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing CERCLA Numbers 8A and Y6 and DOJ Case Number 90-11-2-555, in reimbursement of Past Response Costs for the Site. The Settling Defendant shall forward the certified check to Mellon Bank, Attn: Superfund Accounting, EPA Region VII (Comptroller Branch), P. O. Box 360748M, Pittsburgh, Pennsylvania 15251. The Settling Defendant shall send copies of the check to the United States.

50. Settling Defendant shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States after August 1, 1991. The United States shall send Settling Defendant a bill requiring payment that includes a Regionally-prepared cost summary, which includes all direct and indirect costs incurred by EPA and DOJ and their contractors on a periodic basis. EPA's cost summary shall include (a) EPA's payroll costs, including the names of the persons charging time to the Site, the pay period, the number of hours and the applicable salary and benefit costs for such persons; (b) EPA's travel costs, including the names of the persons charging such travel and the applicable transportation, per diem, and incidental costs; (c) contract costs, including actual dollar amounts, dates(s) paid, and invoice number(s) for such payments; and (d) indirect costs,



including the amount computed on the basis of direct labor hours. Settling Defendant shall make all payments in the manner described in Paragraphs 49, within thirty (30) days of Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 51.

51. Settling Defendant may contest payment of any Future Response Costs under Paragraph 50 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 which are inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) pursuant to Section 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 thirty (30) day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 49. Interest on unpaid contested Future Response Costs shall begin to accrue thirty (30) days after receipt of the bill for such costs at the rate established pursuant to Section 107 (a) of CERCLA, 42 U.S.C. § 9607(a), until such costs and accrued interest have been paid in full. Simultaneously with the payment of the uncontested Future Response Costs, or if all such costs are contested, within thirty (30) days of receipt of the bill, the Settling Defendant shall initiate the Dispute Resolution

procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendant shall remit payment of the contested costs (with accrued interest) to the United States in the manner described in Paragraph 49. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall remit payment for that portion of the costs (plus accrued interest) for which it did not prevail to the United States in the manner described in Paragraph 49. If, after following the procedures set forth in Section XX (Dispute Resolution), the decision of the District Court is appealed by any party, Settling Defendant shall establish an interest bearing escrow account in a bank duly chartered in the State of Iowa and, within fifteen (15) days of receipt of the Court's decision or order, remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendant shall send to the United States a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, within five (5) days of the resolution of the dispute, the Settling Defendant shall direct the escrow

holder to remit the escrowed monies (with accrued interest) to the United States, in the manner described in Paragraph 49. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendant shall direct the escrow holder to remit payment for 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 49; Settling Defendant shall be disbursed the balance of the escrow account. The dispute resolution procedures set forth in this paragraph shall be the exclusive mechanism for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

52. In the event that the payments required by Paragraph 49 are not made within thirty (30) days of the effective date of this Consent Decree or the Payments required by Paragraph 50 within thirty (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 on Past Response Costs shall begin to accrue thirty (30) days after entry of the Consent Decree. The interest on Future Response Costs shall begin to accrue thirty (30) days after 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

53. 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 or costs incurred by the United States including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, acts or omissions of Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendant as EPA's authorized representatives under Section 104(e) of CERCLA. 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.

54. Settling Defendant waives, and shall indemnify and hold harmless the United States with respect to, any claims for damages or reimbursement from the United States, 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 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.

55. No later than fifteen (15) days after the effective date of this Consent Decree, Settling Defendant shall secure, and shall maintain until the first anniversary of EPA's certification of completion of the Remedial Action pursuant to Paragraph 45 of Section XV (Certification of Completion) comprehensive general liability and automobile insurance with limits of three million dollars (\$3,000,000), combined single limit naming as beneficiary 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 contrac-

tor or subcontractor, Settling Defendant need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

**XIX. FORCE MAJEURE**

56. "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, its 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 exercises "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. Force majeure does not include financial inability to complete the Work or a failure to attain the Performance Standards.

57. 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 or in writing 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 VII 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) working days thereafter, Settling Defendant shall provide in writing to EPA 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 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 it intends 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. Settling Defendant shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

58. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event shall be extended by written agreement of EPA, after a reasonable opportunity for review and comment by the State, and the Settling Defendant 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.

59. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or if EPA, after a reasonable opportunity for review and comment by the State, and the Settling Defendant does not agree on the length of the extension for performance of the obligations affected by a force majeure event, EPA shall notify the Settling Defendant in writing within thirty (30) days of its decision concerning whether the delay is attributable to a force majeure event or the length of the extension for performance of the obligations affected by a force majeure event. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's written 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 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 56 and 57, above. If Settling Defendant carries 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**

60. 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 and shall apply to all provisions of this Consent Decree.

61. 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 twenty (20) days from the time the dispute arises, unless it is extended by agreement of the Parties to the Dispute. The dispute shall be considered to have arisen when one party notifies the other party in writing that there is a dispute.

62. 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 twenty (20) 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 data, analysis or opinion supporting that position and any documentation relied upon by the

Settling Defendant. In the written statement, the Settling Defendant shall have the right to claim an additional twenty (20) days to supplement the data, analysis, or opinion supporting its position and any documentation relating thereto.

63. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes which 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: (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 herein shall be construed to allow any dispute by Settling Defendant regarding the ROD.

a. The administrative record of the dispute shall be maintained by EPA and shall all statements of position, including supporting documentation, submitted pursuant to this Paragraph and Paragraph 62.

b. Within fourteen (14) days after receipt of Settling Defendant's statement of position submitted pursuant to Paragraph 62, EPA shall 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, in response to Settling

Defendant's statement of position. Where appropriate, any party may submit supplemental statements of position .

c. The Director of the Waste Management Division, EPA Region VII, shall expeditiously issue a final administrative decision resolving the dispute which shall be based on the Administrative Record. This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 63.d. and e.

d. Any administrative decision by EPA pursuant to Paragraph 63.c. 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 twenty (20) 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 pertaining to the selection or adequacy of any response action or any other dispute which is accorded review on the administrative record under applicable principles of administrative law, Settling Defendant shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's

decision shall be on the administrative record compiled pursuant to Paragraphs 63.a. and 63.b.

64. Formal dispute resolution for disputes not pertaining to the selection or adequacy of any response action or which are not otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this paragraph.

a. Following receipt of Settling Defendant's statement of position submitted pursuant to Paragraph 62, the Waste Management Division Director shall issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendant unless, within twenty (20) days of receipt of the decision, the Settling Defendant files with the Court and serve on all 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. A copy of the notice shall be served on the United States prior to or contemporaneously with the filing of the notice with the Court. The United States may file a response to Settling Defendant's notice of judicial appeal.

b. Judicial review of any dispute which does not pertain to the selection or adequacy of any response action shall be governed by applicable provisions of law. In any such proceeding, the Settling Defendant shall bear the burden of

coming forward with evidence and the burden of persuasion on factual issues.

65. Notwithstanding the invocation of the procedures stated in this Section, Settling Defendant shall continue to perform their obligations under this Consent Decree, including those that are not disputed or not substantially affected by the disputed issue.

#### **XXI. STIPULATED PENALTIES**

66. Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraph 67 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.

67. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified below:

#### **FOR THE FOLLOWING SUBMITTALS (INCLUDING BOTH DRAFT AND FINAL)**

1. Remedial Action Workplan
2. Remedial Design Workplan

3. Health and Safety Plan
4. Operation and Maintenance Plan
5. 30% Design Submittal
6. 60% Design Submittal
7. 95% (Pre-final Final) Design Submittal

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	Day 1 through 7
\$2,500	Day 8 through 21
\$5,000	Every day after 21

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 pursuant to Paragraphs 29 through 39.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	Day 1 through 7
\$1,000	Day 8 through 21
\$2,000	Every day after 21

68. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 81 of Section XXII (Covenant Not to Sue by Plaintiffs), Settling Defendant shall be liable for a stipulated penalty in the amount of \$25,000.

69. 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.

70. Following EPA's determination that Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA shall give Settling Defendant written notification of the same and describe the noncompliance. This notice shall also indicate the amount of penalties due and whether the penalties are continuing to accrue. However, penalties shall accrue as provided in the proceeding paragraph regardless of whether EPA has notified the Settling Defendant of a violation.

71. All penalties owed to the United States under this section shall be due and payable within thirty (30) days of the Settling Defendant's receipt from EPA of a written notification of noncompliance, unless Settling Defendants invoke the Dispute Resolution procedures under Section (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to Mellon Bank, Attn: Superfund Accounting (Comptroller Branch), P. O. Box 360748M, Pittsburgh, Pennsylvania 15251, and shall reference CERCLA Numbers 8A and Y6 and DOJ Case Number 90-11-2-555. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVII (Notices and Submissions).

72. Neither the invocation of dispute resolution procedures under Section XX (Dispute Resolution) nor the payment of penalties shall alter in any way Settling Defendant's obligation

to complete the performance of the Work required under this Consent Decree.

73. Penalties shall continue to accrue as provided in Paragraph 69 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by decision or order of EPA which is not appealed to this Court, accrued penalties shall be paid to EPA within fifteen (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 that the Court determines are owed to EPA within fifteen (15) 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 into an interest bearing escrow account within fifteen (15) 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 sixty (60) days. Within fifteen (15) days of receipt of the appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendant to the extent that it prevails.

74. 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 shall begin to accrue at the end of the thirty-day period at the rate established by the Department of Treasury under 31 U.S.C. § 3717 and 40 C.F.R. § 102.13. Settling Defendant shall further pay a 6 percent (6%) per annum penalty charge to be assessed if the penalty is not paid in full within ninety (90) days after it is due. However, nothing in this section shall be construed as prohibiting, altering, or in any way limiting the ability of Plaintiff 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.

75. No payments made under this Section shall be tax deductible for federal or state tax purposes.

**XXII. COVENANTS NOT TO SUE BY PLAINTIFFS**

76. 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 specifically provided in Paragraphs 77, 78, and 80 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 for performance of the Work and for recovery of Past Response Costs and Future Response Costs. 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 49 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 45 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. Future Liability shall mean any response actions which are beyond those that were selected by the ROD or are set forth in the SOW.

77. United States' Pre-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves 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 additional 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 the United States, are discovered after the entry of this Consent Decree; or (ii) information previously unknown to the United States is received, in whole or in part, after the entry of this Consent Decree, 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 and the environment.

78. United States' Post-certification reservations.

Notwithstanding any other provision of this Consent Decree, the United States reserves 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 additional 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 the United States, are discovered after the certification of completion; or (ii) information is received, in whole or in part, after the certification of completion, and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health and the environment. The above-mentioned reservations of rights in this Paragraph and Paragraph 77 include the right to institute proceedings in this action or in a new action to seek reimbursement of costs incurred as a result of actions undertaken pursuant to Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

79. For purposes of Paragraph 77, the information received by and the conditions known to the United States shall include only that information and those conditions set forth in the Record of Decision for the Site and the administrative record on which the Record of Decision was based. For purposes of Paragraphs 78, the information received by and the conditions

known to the United States shall include only that information and those conditions set forth in the Record of Decision, the administrative record on which the Record of Decision was based, and any information received by the United States pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

80. 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 76. 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 United States Department of the Interior for damages to natural resources at the Site;

(5) criminal liability;

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

(7) liability for additional operable units at the Site.

81. 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 for purposes of Section XVII (Reimbursement of Response Costs).

82. Except as expressly provided in this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law. Except as expressly provided in this Consent Decree, Settling Defendant reserves all rights it may have to oppose or defend against any action or claim brought by EPA or any third party.

### **XXIII. COVENANTS BY SETTLING DEFENDANT**

83. a. Settling Defendant hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States related to or arising from any response action taken 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, or 112 or any other provision of law, or to seek any other costs, damages or attorneys fees from the United States arising out of response activities at the Site.

b. 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's 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.

c. 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. § 300.25(d).

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

84. 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.

85. With regard to claims for contribution against Settling Defendant for matters addressed in this Consent Decree, the Parties hereto agree that Settling Defendant is entitled, as of the effective date of this Consent Decree, to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

87. 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 Plaintiffs).

#### XXV. ACCESS TO INFORMATION

88. 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, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

89. a. Settling Defendant may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, 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 in lieu of providing documents, 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.

90. 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 and materials or information submitted pursuant to this Consent Decree, or any other documents or information evidencing conditions at or around the Site.

#### **XXVI. RETENTION OF RECORDS**

91. Until ten (10) years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 46 of Section XV (Certification of Completion), Settling Defendant shall

preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the Work or liability of Settling Defendant for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until ten (10) years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 46 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. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least ninety (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, in the manner described in Paragraph 89(b). However, all documents, record or information created, generated or collected pursuant to the terms of the Consent Decree shall not be withheld on the grounds that they are privileged.

92. Settling Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of, with intent to defraud, mislead, or otherwise

withhold information from the United States or the State, any records, documents or other information relating to its potential liability with regard to the Site since notification of potential liability by the United States 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; SUBMISSIONS**

93. 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: DOJ No. 90-11-2-555

and

David Wagoner  
Director, Waste Management Division  
United States Environmental Protection Agency  
Region VII  
726 Minnesota Avenue  
Kansas City, Kansas 66101

As to EPA:

Paul Roemerman, SPFD  
EPA Project Coordinator  
United States Environmental Protection Agency  
Region VII  
726 Minnesota Avenue  
Kansas City, Kansas 66101

As to the State:

Keith Schilling  
State Project Coordinator  
Iowa Department of Natural Resources  
Wallace State Office Building  
Des Moines, Iowa 50319

As to the Settling Defendant:

[Name]  
Settling Defendant's Project Coordinator  
[Address]

**XXVIII. EFFECTIVE DATE**

94. 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. EPA shall notify the Settling Defendant of entry of the Consent Decree.

**XXIX. RETENTION OF JURISDICTION**

95. 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 (Dispute Resolution) hereof.

**XXX. APPENDICES**

96. 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 Declaration of Covenants and Restrictions as specified in Paragraph 9.b.

**XXXI. COMMUNITY RELATIONS**

97. Settling Defendant shall prepare and submit to EPA a community relations plan describing the activities the Settling Defendant will undertake to disseminate information regarding the Work to the public. Upon its approval by EPA, after a reasonable opportunity for review and comment by the State, Settling Defendant shall implement the plan. Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As reasonably 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**

98. No modification shall be made to this Consent Decree

without written notification to and written approval of the United States, Settling Defendant, and the Court. Prior to providing its approval to any modification, the United States shall provide the State with a reasonable opportunity to review and comment on the proposed modification. Notwithstanding any other provision of this section, the Parties may agree to minor delays of up to fourteen (14) days, without penalty, in the submission of deliverables or the performance of any task required by this Consent Decree. Any such agreement may be made orally by the Parties' representatives, provided that such oral agreement is promptly confirmed in writing between the Parties.

99. No material modifications shall be made to the SOW, the Remedial Design Work Plan, and the Remedial Action Work Plan, 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 shall provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW, the Remedial Design Work Plan, and the Remedial Action Work Plan that do not materially alter those documents 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. No oral modification of this Consent Decree shall be effective.

100. Nothing in this paragraph shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

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

101. 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.

**XXXIV. SIGNATORIES**

102. Each 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.

103. The Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or 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.

104. The 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 behalf of it

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, including, but not limited to, service of a summons, and any applicable local rules of this Court, for matters arising under or relating to this Consent Decree.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. E. I. du Pont de Nemours and Company, relating to the County Road X23 Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: \_\_\_\_\_  
Barry Hartman  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
Washington, D.C. 20530

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

Date: \_\_\_\_\_  
Richard L. Richards  
Assistant United States Attorney  
Southern District of Iowa  
U.S. Department of Justice



East First and Walnut  
Des Moines, Iowa 50309

Date: 9/24/91  
Morris Kay  
Regional Administrator, Region VII  
U.S. Environmental Protection Agency  
726 Minnesota Avenue  
Kansas City, Kansas 66101

Marla R. Heimann  
Jan

Date: September 26, 1991  
Ceil Price  
Office of Enforcement  
U.S. Environmental Protection Agency  
401 M St., S. W.  
Washington, D. C. 20460

Ceil Price

Date: September 26, 1991  
Baerbel Schiller  
Associate Regional Counsel  
Region VII  
726 Minnesota Avenue  
Kansas City, Kansas 66101

Baerbel Schiller

THE UNDERSIGNED PARTY enters into this Consent Decree relating to the County Road X23 Superfund Site, CERCLA Nos. Y6 and 8A, DOJ Case Number 90-11-2-555

FOR E. I. du Pont de Nemours and Company

Date: September 17, 1991

  
\_\_\_\_\_  
Signature

Name: James B. Allen

Title: Counsel - Environment Group

**APPOINTMENT OF AGENT TO ACCEPT  
SERVICE AND OTHER NOTICES**

The undersigned hereby appoints on its behalf

James B. Allen ("Agent") or his or her designee

Title: Counsel - Environment Group  
Legal Function - D-7156

Address: 1007 Market Street; Wilmington, DE 19898

Telephone: (302) 774-5445

to accept service of process by mail on its behalf with respect to all matters arising under or relating to the Consent Decree relating to the County Road X23 Superfund Site in Iowa, and all other notices unless specifically addressed in the Consent Decree.

~~United Sta~~

This appointment shall be terminated only upon written notice to Agent with a copy to Chief, Environmental Enforcement Section, Land & Natural Resources Division, United States Department of Justice, Washington, D. C. 20530.

Signed under seal this 17th day of September, 1991.

Name of Company: E.I. duPont deNemours & Co

Date: September 17, 1991

By:   
\_\_\_\_\_

Name: James B. Allen

Title: Counsel - Environment Group  
Legal Function - D-7156

Address: 1007 Market Street; Wilmington, DE 198

Telephone: (302) 774-5445