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

SOUTHWEST DISTRICT
RECORDS CENTER
7TH FLOOR

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 THE ATLAS LEDERER COMPANY;)
 GENERAL MOTORS CORPORATION;)
 SENSER METAL, CO., INC.;)
 SIMS BROS. INC.;)
 HERMAN STRAUSS INC.;)
 THE DAVID J. JOSEPH COMPANY;)
 LIVINGSTON & CO., INC.;)
 CONSOLIDATED RAILROAD)
 CORPORATION; NAVISTAR)
 INTERNATIONAL TRANSPORTATION)
 CORPORATION; AND)
 BAILEN BROTHERS, INC.,)
)
 Defendants.)

Civil No. C-3-91-309

Judge Walter H. Rice

CONSENT DECREE

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DIV. OF ENFORCEMENT &
REGULATORY RESPONSE

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Defendants.)
_____)

CONSENT DECREE

I. BACKGROUND

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

B. The United States in its complaint seeks, inter alia, reimbursement of costs incurred by U.S. EPA and the United States Department of Justice ("U.S. DOJ") in responding to the release

and/or threatened release of hazardous substances at the United Scrap Lead Superfund Site in Concord Township, Miami County, Ohio, together with accrued interest.

C. U.S. EPA provided the State of Ohio with an opportunity to participate in negotiations with the Defendants and be a party to this Consent Decree.

D. The Defendants that have entered into this Consent Decree and additional settling parties listed in Appendix D hereto (collectively, the "Settling Generator Defendants") allege that the certain agencies and instrumentalities of the United States ("Settling Federal Agencies") are potentially responsible parties under CERCLA Section 107, 42 U.S.C. § 9607.

E. Settling Generator Defendants, together with Bailen Brothers, Inc. and additional settling parties listed in Appendix F ("Settling Owner/Operator Defendants"), deny any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, and do not acknowledge that any release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged by the Settling Generator Defendants.

F. Pursuant to CERCLA Section 105, 42 U.S.C. § 9605, U.S. 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 of September 21, 1984 (49 Fed. Reg. 37,070).

G. In response to a release or a substantial threat of a release of a hazardous substance at or from the Site, U.S. EPA, pursuant to 40 C.F.R. § 300.430, completed a Remedial Investigation ("RI") Report in February 1988, and completed a Feasibility Study ("FS") Report in August 1988.

H. Pursuant to CERCLA Section 117, 42 U.S.C. § 9617, U.S. EPA published notice of the proposed plan for remedial action on August 29, 1988, in a local newspaper of general circulation. U.S. EPA also published notice of the proposed plan for remedial action on January 27, 1997, in a major local newspaper of general circulation. U.S. EPA provided an opportunity for written and oral comments from the public on both the proposed original and amended plans for remedial action, and conducted public meetings to discuss the proposed remedial plans and obtain public comments. Copies of the transcripts of each public meeting are available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

I. In 1988, U.S. EPA selected a remedial action plan for the Site, which was embodied in a Record of Decision ("ROD") signed by the Regional Administrator on September 30, 1988, in which the State of Ohio concurred. The ROD was amended on June 27, 1997, and the State of Ohio concurred in that amendment. The ROD and its amendment are attached as Appendix A hereto.

J. In 1991, U.S. EPA and certain parties to this Consent Decree entered into an Administrative Order on Consent which required the performance of certain response actions at the Site, including the installation of a fence. The respondents to the Administrative Order have satisfactorily performed the response actions required under that Order in a manner consistent with the NCP and have satisfied all of the provisions of the Order.

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

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

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

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 9613(b). This Court also has personal jurisdiction over the Parties. Solely for purposes of this Consent Decree, the Parties waive all objections and defenses that they may have to jurisdiction of the Court or to venue. No party shall challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2.a. This Consent Decree applies to, is binding upon, and is for the benefit of the Settling Generator Defendants, the Settling Owner/Operator Defendants, their heirs, successors and assigns (collectively, "Settling Defendants"), and the United States. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

b. Until this Consent Decree is terminated, each Settling Defendant agrees to provide its heirs, successors and assigns written notice of this Consent Decree and to provide U.S. EPA, in accordance with Section XXVIII [Notices and Submissions]: (1) notice of any change in corporate or legal status; (2) notice of any transfer or assignment of any portion of the Site; (3) notice of any transfer or assignment of more than thirty-three and one third (33⅓) percent of the Settling Defendant's assets; and (4) the name and address of the corporate successor, transferee, assignee, grantee, etc.

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

IV. DEFINITIONS

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

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

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

b. "Confidential Agreement" shall mean the Stipulation and Protective Order for Confidential Business Information between the United States and the Settling Generator Defendants which was signed by or on behalf of such parties on July 27, 1995, and entered by the Court on August 2, 1995.

c. "Consent Decree" shall mean this Decree and all appendices attached hereto. In the event of a conflict between this Decree and any appendix, this Decree shall control.

d. "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 or State holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal or State holiday, the period shall run until the close of business of the next working day.

e. "Future Response Costs" shall mean all costs not inconsistent with the National Contingency Plan, including, but not limited to, direct and indirect costs that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII [Remedy Review], IX [Access and Institutional Controls] (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or

implement institutional controls including, but not limited to, the amount of just compensation), XVIII [Emergency Response], and Paragraph 94 (Work Takeover) of Section XXIII [Covenants by Plaintiff]. Future Response Costs shall also include all costs not inconsistent with the National Contingency Plan incurred by U.S. EPA in connection with the Site after June 30, 1996, and by U.S. DOJ in connection with the Site after September 30, 1996.

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

g. "Matters Addressed" shall mean the payment of Past and Future Response Costs incurred and to be incurred by any party to this Consent Decree, and the implementation of the remedy selected by U.S. EPA under the amended ROD, including but not limited to Remedial Design, Remedial Action, Operation and Maintenance, and the imposition of institutional controls.

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

i. "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 U.S. EPA pursuant to this Consent Decree and the Statement of Work ("SOW").

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

k. "Parties" shall mean the United States (including the Settling Federal Agencies), the Settling Generator Defendants, and the Settling Owner/Operator Defendants.

l. "Past Response Costs" shall mean all costs not inconsistent with the NCP that U.S. EPA paid at or in connection with the Site through June 30, 1996, and that the U.S. Department of Justice paid at or in connection with the Site through September 30, 1996, plus Interest on all such costs that has accrued through such dates.

m. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section IX of the ROD, as amended, and Sections 4, 5, 6, 7, and 8 of the SOW except to the extent that U.S. EPA determines that any such performance standard is technically infeasible.

n. "Plaintiff" shall mean the United States of America on behalf of U.S. EPA.

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

o. "Record of Decision" or "ROD" shall mean the U.S. EPA Record of Decision relating to the Site, signed on September 30, 1988, by the Regional Administrator, U.S. EPA Region 5, or his delegate, and amendments thereto. The 1988 ROD, together with the amendment signed by the Regional Administrator on June 27, 1997, is attached as Appendix A. To the extent that there is an inconsistency between any ROD and a subsequent amendment to such ROD, the amendment will control.

p. "Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Generator Defendants to implement all Work yet to be

completed under the ROD and its amendments, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by U.S. EPA.

q. "Remedial Design" shall mean those activities to be undertaken by the Settling Generator Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

r. "Remedial Design/Remedial Action Work Plan" or "RD/RA Work Plan" shall mean the document developed pursuant to Paragraph 10.a. of this Consent Decree and approved by U.S. EPA in consultation with the State of Ohio Environmental Protection Agency, and any amendments thereto.

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

t. "Settling Defendants" shall mean collectively the Settling Generator Defendants and the Settling Owner/Operator Defendants.

u. "Settling Generator Defendants" shall mean those Parties identified in Appendix D.

v. "Settling Federal Agencies" shall mean those departments, agencies and instrumentalities of the United States identified in Appendix E.

w. "Settling Owner/Operator Defendants" shall mean those Parties identified in Appendix F.

x. "Site" shall mean the United Scrap Lead Superfund Site, encompassing approximately twenty-five (25) acres, located at 2117 South County Road 25A, in Concord Township, Miami County, Ohio, and depicted generally on the map attached as Appendix C.

y. "State" shall mean the State of Ohio.

z. "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 made in accordance with this Consent Decree.

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

bb. "United States" shall mean the United States of America, including all of its departments, agencies and instrumentalities.

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

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

ee. "Work" shall mean all activities that the Settling Generator Defendants are required to perform under this Consent Decree, except those required by Section XXVII [Retention of Records]. The Work must attain a requirement that is promulgated or modified after September 16, 1988, the date of signature of the ROD (as modified by the amendment signed June 27, 1997) only when the Administrator of U.S. EPA Region 5 (or the Administrator's delegate) determines, upon a finding based on the best scientific judgment available to U.S. EPA that such requirement

is necessary to ensure that the Work is protective of human health and the environment. See, 40 C.F.R. § 300.430(f)(1)(ii)(B)(1).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to:

a. resolve the claims of Plaintiff against the Settling Defendants and the claims or claims that could have been asserted by the Settling Defendants against the Settling Federal Agencies, as provided in this Consent Decree; and

b. protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site to be performed by the Settling Generator Defendants, and financed by the Settling Generator Defendants and the Settling Federal Agencies.

6. Commitments by Settling Generator Defendants and Settling Federal Agencies

a. The Settling Generator Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Generator Defendants and approved by U.S. EPA pursuant to this Consent Decree. Settling Generator Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The Settling Federal Agencies shall reimburse the Settling Generator Defendants and the EPA Hazardous Substance Superfund for Past Response Costs and Future Response Costs, as provided in this Consent Decree.

c. The obligations of Settling Generator Defendants under this Consent Decree to finance and perform the Work and to reimburse the response costs incurred by the United States are joint and several. In the event of the insolvency or other failure of any one or more Settling Generator Defendants to implement the requirements of this Consent Decree, the remaining Settling Generator Defendants shall complete all such requirements.

7. Compliance With Applicable Law

All Work undertaken by Settling Generator Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Generator Defendants must also comply with all applicable or relevant and appropriate requirements ("ARARs") of all Federal and state environmental laws and regulations as set forth in the ROD and the SOW, unless any such ARAR is waived in writing by U.S. EPA. The Work conducted pursuant to this Consent Decree, if approved by U.S. EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in CERCLA Section 121(e), 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, 40 C.F.R. § 300.400(e), no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Generator Defendants shall submit timely and complete applications for the same.

b. The Settling Generator Defendants may seek relief under the provisions of Section XX [Force Majeure] of this Consent Decree for any delay in the performance of the Work resulting

from a failure to obtain, or a delay in obtaining, any permit required for the Work. The Settling Generator Defendants shall not be subject to any stipulated or statutory penalties for delays in Work caused solely by a governmental entity's delayed issuance or denial of a permit. The Settling Generator Defendants shall have the burden of establishing, using a preponderance of the evidence standard, that any such delay was caused solely by the involved governmental entity.

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.

VI. PERFORMANCE OF THE WORK BY SETTLING GENERATOR DEFENDANTS

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Generator Defendants pursuant to Sections VI [Performance of the Work by Settling Generator Defendants], VII [Remedy Review], VIII [Quality Assurance, Sampling and Data Analysis], and XVIII [Emergency Response] of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by U.S. EPA, which disapproval shall not be unreasonably exercised. Within 10 days after the lodging of this Consent Decree, Settling Generator Defendants shall notify U.S. EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. Within 30 days of receipt of that notification, U.S. EPA will issue to Settling Generator Defendants in writing a notice of disapproval or an authorization to proceed. If at any time thereafter, Settling Generator Defendants propose to change a Supervising Contractor, Settling Generator Defendants shall give such notice to U.S. EPA and must obtain an authorization to proceed from U.S. EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If U.S. EPA disapproves a proposed Supervising Contractor, Settling Generator Defendants shall submit to U.S. EPA, within 30 days of receipt of U.S. EPA's disapproval, a list of contractors, including the qualifications of each contractor, that would be acceptable to them. Within 20 days of receipt of Settling Generator Defendants' list of contractors, U.S. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Generator Defendants may select any contractor from that list that is not disapproved and shall notify U.S. EPA of the name of the contractor selected within 21 days of receipt of U.S. EPA's authorization to proceed.

c. If U.S. EPA fails to provide written notice of an authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Generator Defendants from meeting one or more deadlines in this Consent Decree or in a plan approved by the U.S. EPA pursuant to this Consent Decree, Settling Generator Defendants may seek relief under the provisions Section XX [Force Majeure] of this Consent Decree

10. Remedial Design/Remedial Action.

a. Within 60 days after U.S. EPA's issuance of an authorization to proceed pursuant to Paragraph 9 [Selection of Supervising Contractor], Settling Generator Defendants shall submit to U.S. EPA and the State a work plan for the design and implementation of the Remedial Design/Remedial Action at the Site ("Remedial Design/Remedial Action Work Plan" or "RD/RA Work Plan"). The RD/RA Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the SOW, and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by U.S. EPA, the RD/RA Work Plan shall be incorporated into and become enforceable under this Consent

Decree. Within 60 days after U.S. EPA's issuance of an authorization to proceed, the Settling Generator Defendants shall submit to U.S. EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and U.S. EPA requirements including, but not limited to, 29 C.F.R. § 1910.120 [Hazardous Waste Operations and Emergency Response] and 29 C.F.R. § 1926 [Safety and Health Regulations for Construction].

b. The RD/RA Work Plan shall include plans and schedules for implementation of all remedial design and remedial action tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) a field sampling and analysis plan (including, but not limited to, a Quality Assurance Project Plan ("QAPP") in accordance with Section VIII [Quality Assurance, Sampling and Data Analysis]; (2) a Groundwater Monitoring Project Plan ("GMPP"); (3) a performance standard verification plan; and (4) a contingency plan. The RD/RA 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 Generator Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor). Concurrent with the submittal of the draft RD/RA Work Plan, Settling Generator Defendants shall submit a pre-final design. This submittal shall include at a minimum, the following: (1) design criteria; (2) project delivery strategy; (3) final plans, drawings and specifications; (4) a draft construction schedule; (5) a draft Construction Quality Assurance Project Plan ("CQAPP"), and (6) procedures and plans for the disposal of contaminated materials. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality

assurance official to conduct a quality assurance program during the construction phase of the project. Any value engineering proposals must be identified and evaluated during this review.

c. Upon approval of the RD/RA work plan, after a reasonable opportunity for review and comment by the State, and upon U.S. EPA's Notice of Authorization to Proceed, Settling Generator Defendants shall excavate the battery casings and conduct pre-excavation confirmatory soil sampling, and submit to U.S. EPA the Pre-Confirmatory Soil Sampling Report. The final design shall be submitted within 30 days after completion of the pre-confirmatory soil sampling. It shall include all of the items required in the pre-final submittal and shall incorporate U.S. EPA's comments on the pre-final design submittal, and the results of pre-excavation soil sampling. The final design submittal shall also include: (1) estimates of the cost of construction; (2) a final CQAPP; and (3) a final construction schedule.

d. The Settling Generator Defendants shall submit to U.S. EPA and the State, for review and approval pursuant to Section XIV [U.S. EPA Approval of Plans and Other Submissions], all plans, submittals, or other deliverables required under the approved RD/RA Work Plan in accordance with the approved schedule. Unless otherwise directed by U.S. EPA, Settling Generator Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the RD/RA Work Plan.

✓ 11. ~~The Settling Generator Defendants shall continue to implement the Remedial Action and perform O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.~~

12. Modification of the SOW or Related Work Plans.

a. If U.S. EPA determines that modification of the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, U.S. EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to 40 C.F.R.

§ 300.430(f)(1)(ii)(B)(1) (1990).

b. For the purposes of this Paragraph and Paragraphs 60 (Completion of the Remedial Action) and 61 (Completion of the Work) only, the "scope of the remedy selected in the ROD" shall consist of the actions set forth in Sections 4, 5, 6, 7, and 8 of the SOW.

13. If Settling Generator Defendants object to any modification determined by U.S. EPA to be necessary pursuant to Paragraph 12 of this Consent Decree, they may seek dispute resolution pursuant to Paragraph 74 [concerning disputes accorded review on the administrative record] of Section XXI [Dispute Resolution]. The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

14. Settling Generator Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with Paragraph 12.

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

16. Settling Generator Defendants acknowledge and agree 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 the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

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

b. The Settling Generator Defendants shall include in such 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 the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Settling Generator Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

c. The identity of the receiving facility and state will be determined by the Settling Generator Defendants during the RD/RA phase of the Work. The Settling Generator Defendants shall provide the information required by Paragraph 17.b. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

18. For purposes of complying with their collective obligations under this Consent Decree, Settling Generator Defendants may act or respond through an authorized representative.

VII. REMEDY REVIEW

19. Periodic Review. Settling Generator Defendants shall conduct any studies and investigations as requested by U.S. EPA that are reasonably necessary to permit U.S. EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by CERCLA Section 121(c), 42 U.S.C. § 9621(c), and any applicable regulations.

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

21. Opportunity To Comment. Settling Generator Defendants and, if required by CERCLA Sections 113(k)(2) or 117, 42 U.S.C. §§ 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by U.S. EPA as a result of the review conducted pursuant to CERCLA Section 121(c), 42 U.S.C. § 9621(c), and to submit written comments for the record during the comment period.

22. Settling Generator Defendants' Obligation To Perform Further Response Actions. If U.S. EPA selects further response actions for the Site, the Settling Generator Defendants shall undertake such further response actions to the extent that the reopener conditions in Paragraph 90 or Paragraph 91 of Section XXIII [Covenants by Plaintiff] are satisfied. Settling Generator Defendants may invoke the procedures set forth in Section XXI [Dispute Resolution] to dispute: (1) U.S. EPA's determination that the reopener conditions of Paragraph 90 or Paragraph 91 of Section XXIII [Covenants by Plaintiff] are satisfied; (2) U.S. EPA's determination that the Remedial Action is not

protective of human health and the environment; or (3) U.S. EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to U.S. EPA's selection of further response actions shall be resolved pursuant to Paragraph 74 [concerning disputes accorded review on the administrative record].

23. Submissions of Plans. If Settling Generator Defendants are required to perform further response actions pursuant to Paragraph 22, they shall submit a plan for such work to U.S. EPA for approval in accordance with the procedures set forth in Section VI [Performance of the Work by Settling Generator Defendants] and shall implement the plan approved by U.S. EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

24. Settling Generator Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "U.S. EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (U.S. EPA QA/R5; "Preparing Perfect Project Plans," (U.S. EPA/600/9-88/087), and subsequent amendments to such guidelines upon notification by U.S. EPA to Settling Generator Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Generator Defendants shall submit to U.S. EPA for approval, after a reasonable opportunity for review and comment by the State, a QAPP that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by U.S. EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree.

Settling Generator Defendants shall make reasonable efforts to assist U.S. EPA personnel and U.S. EPA's authorized representatives in obtaining access at reasonable times to all laboratories utilized by Settling Generator Defendants in implementing this Consent Decree. In addition, Settling Generator Defendants shall ensure that such laboratories shall analyze all samples submitted by U.S. EPA pursuant to the QAPP for quality assurance monitoring. Settling Generator Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted U.S. EPA methods. Accepted U.S. EPA methods consist of those methods that 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, or other current guidance determined to be relevant by U.S. EPA. Settling Generator Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an U.S. EPA or U.S. EPA-equivalent Quality Assurance/Quality Control program. Settling Generator Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by U.S. EPA.

25. Upon request, the Settling Generator Defendants shall allow split or duplicate samples to be taken by U.S. EPA or their authorized representatives. Settling Generator Defendants shall notify U.S. EPA not less than 5 (five) business days in advance of any sample collection activity unless shorter notice is consented to by U.S. EPA, which consent shall not be unreasonably withheld. In addition, U.S. EPA shall have the right to take any additional samples that U.S. EPA deems necessary. Upon request, U.S. EPA shall allow the Settling Generator Defendants to take split or

duplicate samples of any samples it takes pursuant to this Consent Decree or otherwise relating to the Site.

26. Settling Generator Defendants shall submit to U.S. EPA 3 (three) copies and the State 1 (one) copy of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Generator Defendants with respect to the implementation of this Consent Decree unless U.S. EPA agrees otherwise.

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



IX. ACCESS AND INSTITUTIONAL CONTROLS

28.a. Notice of Record and Title Commitment. With respect to any property owned or controlled by the Settling Owner/Operator Defendants that is located within the Site, within 15 days after the entry of this Consent Decree, the Settling Owner/Operator Defendants shall:

(1) submit to U.S. EPA for review and approval a notice to be filed with the County Recorder for Miami County, Ohio, and an affidavit ("CD Affidavit") conforming in form and content to the requirements of Ohio Revised Code Section 5301.252 which shall, among other things:

(i) provide notice to all successors-in-title that: (A) the property is part of the Site; (B) in a Record of Decision signed on September 30, 1988 and amended on June 27, 1997, U.S. EPA selected a remedy for the Site; and (C) potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy; and

(ii) advise interested parties of the requirements of the Consent Decree as they pertain to the property in question; and

(2) provide U.S. EPA a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

b. The CD Affidavit shall identify the United States District Court for the Southern District of Ohio as the court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Owner/Operator Defendant(s) shall record the CD Affidavit within 10 days of U.S. EPA's approval of the CD Affidavit. The Settling Owner/Operator Defendants shall provide U.S. EPA with a certified copy of the recorded CD Affidavit within 10 days of the recording of that document.

29. Provision of Access by Settling Owner/Operator Defendants. Commencing on the date of lodging of this Consent Decree, Settling Owner/Operator Defendants shall:

a. provide the United States and its representatives, including, but not limited to, the Settling Generator Defendants and their contractors, permanent access to all portions of the Site within their ownership or control, for the purposes of conducting any activity related to this Consent Decree including, but not limited to: (1) monitoring the Work; (2) verifying any data or information submitted to the United States; (3) conducting investigations relating to contamination at or near the Site; (4) obtaining samples; (5) assessing the need for, planning, or implementing additional response actions at or near the Site; (6) inspecting and copying records, operating logs, contracts, or other documents maintained at the Site and/or generated by Settling Generator Defendants or their agents in implementing the Work required under this Consent Decree, consistent with Section XXVI

[Access to Information]; and (7) assessing Settling Generator Defendants' compliance with this Consent Decree; and

b. refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. The land use restrictions applicable to this Site are set forth in Appendix G.

30. Long-Term Access and Land Use Restriction Requirements:

a.(i) The Settling Generator Defendants, within 30 days of the Certification of Completion of the Remedial Action, shall provide the Settling Owner/Operator Defendants and U.S. EPA, a copy of a survey, prepared and certified by a registered surveyor, which sets forth the legal description, by metes and bounds, of the on-Site area to which long-term access will be required.

(ii) Within 30 days of receipt of the survey from the Settling Generator Defendants, the Settling Owner/Operator Defendants shall execute and record with the County Recorder for Miami County, Ohio, an easement, running with the land, that:

(1) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 29(a) of this Consent Decree; and

(2) grants the right to enforce the land/water use restrictions set forth in Appendix G of this Consent Decree (hereinafter referred to as "restrictive covenants"), or other restrictions that U.S. EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree.

(iii) Such Settling Owner/Operator Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by U.S. EPA: (A) the United States, on behalf of U.S. EPA, and its representatives, (B) the State and its representatives, (C) the Settling Generator Defendants and their representatives, and/or (D) other appropriate grantees.

31. The granting of access and a restrictive easement by the Settling Owner/Operator Defendants under this Section shall constitute the Settling Owner/Operator Defendants' contribution to the performance of the Remedial Action at this Site.

32. Acquisition of Access Rights and Restrictive Covenant Rights by Settling Generator Defendants. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Owner/Operator Defendants, Settling Generator Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Generator Defendants, as well as for the United States on behalf of U.S. EPA and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 29.a. of this Consent Decree;

b. an agreement, enforceable by the Settling Generator Defendants and the United States, to abide by the obligations and restrictions established set forth in Appendix G of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. the execution and recordation with the County Recorder for Miami County, Ohio, of an easement, running with the land, that grants:

(i) a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 29.a. of this Consent Decree;

(ii) the right to enforce the land/water use restrictions set forth in Appendix G of this Consent Decree (hereinafter referred to as "restrictive easements"), or other restrictions that U.S. EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by U.S. EPA: (A) the United States, on behalf of U.S. EPA, and its representatives; (B) the State and its representatives; (C) the Settling Generator Defendants and their representatives; and/or (D) other appropriate grantees.

d. If any agreement or easement required by this Paragraph 32 is not obtained in a timely manner, Settling Generator Defendants shall promptly notify U.S. EPA in writing, and shall include in that notification a summary of the steps that the Settling Generator Defendants have taken to attempt to obtain the agreement/easement. The United States may, as it deems appropriate, assist Settling Generator Defendants in obtaining any required agreements. Settling Generator Defendants shall reimburse the United States, in accordance with the procedures in Paragraph 37 (pertaining to reimbursement of Future Response Costs) of Section X [Reimbursement of Response Costs by Settling Defendants], for all costs not inconsistent with the NCP incurred by the United States in

assisting in the acquisition of any such agreement, including, but not limited to, the amount paid for the land use restrictions.

e. If U.S. EPA notifies Settling Generator Defendants in writing that additional access easements are required to conduct any activity related to this Consent Decree, or that additional land/water use-restrictive easements are needed to protect the remedy, the public health, or the environment, with respect to property that is not owned or controlled by any of the Settling Owner/Operator Defendants, Settling Generator Defendants shall use best efforts to obtain agreements for the imposition of such land use restrictions pursuant to the procedure outlined in this subparagraph, except that the time requirements shall commence with the date of receipt of the written notice, as opposed to the schedule set forth in the SOW. A material violation by a Settling Defendant of any access easement or land use restriction filed pursuant to this Consent Decree shall be considered a violation of this Consent Decree.

f. For purposes of Paragraphs 32 and 32.e. of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements.

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

33. Actions Required of Settling Owner/Operator Defendants Pertaining to Conveyances of

Site Interests:

a.(i) At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Settling Owner/Operator Defendant(s) proposing to convey the interest shall give the grantee written notice of: (1) this Consent Decree; (2) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to this Section IX [Access and Institutional Controls]; and (3) any instrument by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive easements") pursuant to this Section IX [Access and Institutional Controls]. At least 30 days prior to such proposed conveyance, the Settling Owner/Operator Defendant(s) proposing to convey the interest shall also give written notice to U.S. EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee. No Settling Owner/Operator Defendant shall consummate a conveyance of any property interest in the Site without the advance written concurrence of U.S. EPA.

(ii) In the event of any such conveyance, the Settling Owner/Operator Defendants' obligations under this Consent Decree, including, but not limited to, their obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to this Section (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Settling Owner/Operator Defendants.

b. If, prior to the Certification of Completion of the Remedial Action, Settling Owner/Operator Defendants propose to convey any of the property interests set forth in Paragraph 33(a)(I) of this Consent Decree, they shall submit to U.S. EPA for review and approval with respect to such property:

(i) a draft easement, incorporating the land use restrictions set forth in Appendix G, that is enforceable under the laws of the State of Ohio, free and clear of all prior liens and encumbrances (except real estate taxes for which Settling Owner/Operator Defendant United Scrap Lead Co., Inc., is responsible, and other liens and encumbrances approved by U.S. EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

(ii) a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

c. Within 15 days of U.S. EPA's approval and acceptance of the easement identified in the preceding subparagraph, Settling Owner/Operator Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the County Recorder for Miami County, Ohio. Within 30 days of the recording of the easement, the Settling Owner/Operator Defendants shall provide U.S. EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

d. In no event shall the conveyance by the Settling Owner/Operator Defendants of their real property interests in the Site release or otherwise affect the liability of the Settling

Owner/Operator Defendant(s) to comply with all provisions of this Consent Decree, absent the prior written consent of U.S. EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

34. Retention of Rights by the United States: Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REIMBURSEMENT OF RESPONSE COSTS BY SETTLING DEFENDANTS

35. Settling Generator Defendants shall reimburse the EPA Hazardous Substance Superfund \$1,351,000, in full satisfaction of the United States' claim against Settling Generator Defendants for reimbursement of Past Response Costs. The Settling Generator Defendants' obligation under this subparagraph shall be satisfied by the Settling Federal Agencies pursuant to Paragraph 40.a.

36. a. Within 60 days of entry of this Consent Decree, Settling Owner/Operator Defendants shall reimburse the U.S. EPA Hazardous Substance Superfund \$3,500. The Settling Owner/Operator Defendants shall make the payment required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing U.S.A.O. file number 9124845, U.S. EPA Region 5, and Site/Spill ID No. 05-He, and U.S. DOJ case number 90-11-3-279B, and the name and address of the party making payment. The Settling Owner/Operator Defendants shall send the check(s) to U.S. EPA Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, and shall send copies of the check(s) to the United States as specified in Section XXVIII [Notices and Submissions] and Chief, Program Accounting and Analysis Section, Resource Management Division, U.S. EPA Region V, MF-10J, Chicago, Illinois

60604, and the Office of the United States Attorney, Southern District of Ohio, Federal Building, Room 602, 200 W. Second St., Dayton, Ohio 45400.

b. The \$3,500 payment by the Settling Owner/Operator Defendants under Paragraph 36.a. this Section, together with the costs incurred by the Settling Owner/Operator Defendants in fulfilling their obligations under Section X [Access and Institutional Controls] (estimated to be \$1,500), and the Settling Owner/Operator Defendants' payments, if any, under Section 12 [Disposition of Proceeds from Sale, Lease or Reuse of the Site], shall constitute the Settling Owner/Operator Defendants' contribution toward reimbursement of the Past Response Costs at this Site, and fully satisfy the claims of the United States against the Settling Owner/Operator Defendants for reimbursement of Past Response Costs.

37. Settling Generator Defendants shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the NCP. The United States will send Settling Generator Defendants a bill, on an annual basis, requiring payment that includes a cost summary, which includes direct and indirect costs incurred by U.S. EPA and its contractors, and a U.S. DOJ-prepared cost summary which would reflect costs incurred by U.S. DOJ and its contractors, if any, that relate to this Consent Decree. Settling Generator Defendants shall make all payments within 90 days of Settling Generator Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 38. The Settling Generator Defendants shall make all payments required by this Paragraph in the form of a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund" and referencing U.S.A.O. file number 9124845, U.S. EPA Region 5, and Site/Spill ID No. 05-H5, and U.S. DOJ case number 90-11-3-279B, and the name and address of the party making payment. The Settling Generator Defendants shall send the check(s) to U.S.

EPA Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, and shall send copies of the check(s) to the United States as specified in Section XXVIII [Notices and Submissions] and Chief, Program Accounting and Analysis Section, Resource Management Division, U.S. EPA Region V, MF-10J, Chicago, Illinois 60604.

38. Settling Generator Defendants may contest payment of any Future Response Costs that are billed under Paragraph 37 if they determine that the United States has made an error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXVIII [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 Generator Defendants shall within the 90-day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 37 of this Consent Decree. Simultaneously, the Settling Generator Defendants shall establish a reserve account, designated as the "Future Costs Reserve" within the United Scrap Lead Respondent Trust Fund (Account No. 75-0046-005) established with National City Bank, Cleveland, Ohio, and remit to that account funds equivalent to the amount of the contested Future Response Costs. The Settling Generator Defendants shall send to the United States, as provided in Section XXVIII [Notices and Submissions], a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the Future Costs Reserve and a copy of the most recent account statement demonstrating that the Future Costs Reserve has sufficient funds to cover the contested Future Response Costs. Simultaneous with establishment of the Future Costs Reserve, the Settling Generator Defendants shall initiate the Dispute Resolution procedures

of Section XXI [Dispute Resolution]. If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Generator Defendants shall pay the sums due (with any accrued Interest) to the United States in the manner described in Paragraph 37. If the Settling Generator Defendants prevail concerning any aspect of the contested costs, the Settling Generator Defendants shall pay to the United States in the manner described in Paragraph 37 that portion of the costs (plus any associated accrued Interest) for which they did not prevail with any remaining funds in the Future Costs Reserve reverting to the Trust Fund Account referenced above. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXI [Dispute Resolution] shall be the exclusive mechanisms for resolving disputes regarding the Settling Generator Defendants' obligation to reimburse the United States for its Future Response Costs.

39. In the event that the payment required by Paragraph 35 is not made within 90 days of the effective date of this Consent Decree, the Settling Federal Agencies shall pay interest on the unpaid balance under Paragraph 42. In the event that the payments required by Paragraph 37 are not made within 90 days of the Settling Generator Defendants' receipt of the bill, Settling Generator Defendants shall pay Interest in accordance with this Paragraph. The Interest on Future Response Costs shall begin to accrue on the 31st day following receipt of the bill. The Interest shall accrue through the date of the Settling Generator Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Generator Defendants' failure to make timely payments under this Section.

XI. REIMBURSEMENT OF RESPONSE COSTS BY SETTLING FEDERAL AGENCIES

40. As soon as reasonably practicable after the effective date of this Consent Decree, the United States on behalf of the Settling Federal Agencies, shall cause to be paid to:

a. the EPA Hazardous Substance Superfund \$1,351,000, in reimbursement of Past Response Costs as provided in Paragraph 35 of this Consent Decree; and

b. the Settling Generator Defendants, \$1,049,000. Payment by the Settling Federal Agencies of the obligations specified in Paragraph 40.a. and this subparagraph shall resolve the liability of the Settling Federal Agencies and the claims or claims that could have been asserted by the Settling Generator Defendants against the Settling Federal Agencies. Funds to be paid to the Settling Generator Defendants by the Settling Federal Agencies under this Paragraph shall be deposited in the United Scrap Lead Respondent Trust Fund (Account No. 75-0046-005), established with National City Bank, Cleveland, Ohio, in accordance with the written instructions provided by the Settling Generator Defendants.

41. The parties to this Consent Decree recognize and acknowledge that the payment obligations of the Settling Federal Agencies under this Consent Decree can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

42. In the event that payments required by Paragraph 40 are not made within 90 days of the effective date of this Consent Decree, the Settling Federal Agencies shall pay Interest on the unpaid

balance. The Interest to be paid under this Paragraph shall begin to accrue on the 91st day following the effective date of this Consent Decree and shall accrue through the date of the payment.

XII. DISPOSITION OF PROCEEDS FROM SALE, LEASE OR REUSE OF THE SITE

43. The Settling Owner/Operator Defendants shall pay all proceeds from the lease, sale, reuse or other disposition of the Site equally to the U.S. EPA Hazardous Substance Superfund and to the Settling Generator Defendants to resolve the claims against the Settling Owner/Operator Defendants, or any such claims that could have been asserted by U.S. EPA and/or the Settling Generator Defendants: Provided, that any such lease or sale of the Site shall be for not less than the Site's fair market rental value or fair market value, respectively.

XIII. REPORTING REQUIREMENTS

44. In addition to any other requirement of this Consent Decree, Settling Generator Defendants shall submit to both U.S. EPA 3 (three) copies and the State 1 (one) copy of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Generator Defendants or their contractors or agents in the previous month; (c) identify all plans and other deliverables required by this Consent Decree which were 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 six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays

or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Generator Defendants have proposed to U.S. EPA or that have been approved by U.S. EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Generator Defendants shall submit these progress reports to U.S. EPA and the State by the tenth day of every month following the lodging of this Consent Decree until U.S. EPA provides the Settling Generator Defendants with a certification pursuant to Paragraph 60.b. of Section XVII [Certification of Completion]. If requested by U.S. EPA, Settling Generator Defendants shall also provide briefings for U.S. EPA to discuss the progress of the Work.

45. The Settling Generator Defendants shall notify U.S. EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than 5 (five) days prior to the performance of the activity, unless the United States consents to a shorter time period.

46. Upon the occurrence of any event during performance of the Work that Settling Generator Defendants are required to report pursuant to CERCLA Section 103, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004, Settling Generator Defendants shall within 24 hours of the onset of such event orally notify the U.S. EPA Project Coordinator or the Alternate U.S. EPA Project Coordinator (in the event of the unavailability of the U.S. EPA Project Coordinator), or, in the event that neither the U.S. EPA Project Coordinator or Alternate U.S. EPA Project Coordinator is available, the Emergency Response Section, Region 5, U.S. EPA. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

47. Within 20 days of the onset of an event described in Paragraph 46, Settling Generator Defendants shall furnish U.S. EPA a written report, signed by the Settling Generator Defendants' Project Coordinator, setting forth the events that occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Generator Defendants shall submit to U.S. EPA a report setting forth all actions taken in response thereto.

48. Settling Generator Defendants shall submit 5 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 U.S. EPA in accordance with the schedules set forth in such plans. Settling Generator Defendants shall simultaneously submit 1 copy of all such plans, reports and data to the State.

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

XIV. U.S. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

50. After review of any plan, report or other item that is required to be submitted for approval pursuant to this Consent Decree, U.S. EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Generator Defendants modify the submission; or (e) any combination of the above. However, U.S. EPA shall not modify a submission without first providing Settling Generator Defendants at least one notice of deficiency and an opportunity

to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

51.a. In the event of approval, approval upon conditions, or modification by U.S. EPA, pursuant to Paragraph 50(a), (b), or (c), Settling Generator Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by U.S. EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXI [Dispute Resolution] with respect to the modifications or conditions made by U.S. EPA;

b. In the event that U.S. EPA disapproves the submission and directs its modification, and the re-submission contains the same or substantially similar material defect, which defect indicates a bad faith lack of effort to submit an acceptable deliverable, U.S. EPA retains the right to seek stipulated penalties as provided in Section XXII [Stipulated Penalties].

52.a. Upon receipt of a notice of disapproval pursuant to Paragraph 50(d), Settling Generator Defendants shall, within 14 days or such longer time as specified by U.S. EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XXII [Stipulated Penalties], shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 53 and 54.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 49(d), Settling Generator Defendants shall proceed, at the direction of U.S. EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient

portion of a submission shall not relieve Settling Generator Defendants of any liability for stipulated penalties under Section XXII [Stipulated Penalties].

53. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by U.S. EPA, U.S. EPA may again require the Settling Generator Defendants to correct the deficiencies, in accordance with the preceding Paragraphs of this Section. U.S. EPA also retains the right to modify or develop the non-final plan, report or other item. Settling Generator Defendants shall implement any such plan, report, or other item, as modified or developed by U.S. EPA, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXI [Dispute Resolution].

54. If upon resubmission, a plan, report, or item is disapproved or modified by U.S. EPA due to a material defect, Settling Generator Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Generator Defendants invoke the dispute resolution procedures set forth in Section XXI [Dispute Resolution] and U.S. EPA's action is overturned pursuant to that Section. The provisions of Section XXI [Dispute Resolution] and Section XXII [Stipulated Penalties] shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If U.S. EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XXII [Stipulated Penalties].

55. All plans, reports, and other items required to be submitted to U.S. EPA under this Consent Decree shall, upon approval or modification by U.S. EPA, be enforceable under this Consent Decree, subject only to the Settling Generator Defendants' right to invoke the Dispute Resolution procedures set forth in Section XXI [Dispute Resolution] with respect to the

modifications made by U.S. EPA. In the event U.S. EPA approves a portion of a plan, report, or other item required to be submitted to U.S. EPA under this Consent Decree, the approved portion shall be enforceable under this Consent Decree.

XV. PROJECT COORDINATORS

56. Within 20 days of lodging this Consent Decree, Settling Generator Defendants, the State, and U.S. EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Generator Defendants' Project Coordinator shall be subject to disapproval by U.S. EPA, which disapproval shall not be unreasonably exercised, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Generator Defendants' Project Coordinator shall not be an attorney for any of the Settling Generator Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

57. Plaintiff may designate other representatives, including, but not limited to, U.S. EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. U.S. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. In addition, U.S. EPA's Project Coordinator or Alternate Project Coordinator shall have authority,

consistent with the NCP to halt any Work required by this Consent Decree and to take any necessary response action when that person determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

58. U.S. EPA's Project Coordinator and the Settling Generator Defendants' Project Coordinator will confer, at a minimum, on a monthly basis.

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

59.a. Within 30 days of entry of this Consent Decree, Settling Generator Defendants shall establish and maintain financial security in the amount of \$16,700,000 in one or more of the following forms:

- (1) A surety bond guaranteeing performance of the Work;
- (2) One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- (3) A trust fund;
- (4) A guarantee to perform the Work by one or more parent corporations or subsidiaries; or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants;
- (5) A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f); or
- (6) Any other method approved by U.S. EPA that may be appropriate for this action. Any conditions imposed by U.S. EPA with regard to such method shall be considered incorporated into this Consent Decree, subject to the Settling Generator Defendants' right to

invoke the Dispute Resolution procedures set forth in Section XXI [Dispute Resolution] with respect to such conditions: Provided, Should Settling Generator Defendants invoke the dispute resolution procedures, they shall nonetheless be bound by the conditions imposed by U.S. EPA until there is a settlement or dispute resolution decision in their favor.

b.(1) If U.S. EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, U.S. EPA may require Settling Generator Defendants, within 30 days of receipt of notice of U.S. EPA's determination, to establish and maintain financial security in the amount of the projected cost of the remaining Work, as determined by U.S. EPA, in one or more of the following forms:

- i. a surety bond guaranteeing performance of the Work;
- ii. one or more irrevocable letters of credit equaling the total estimated cost of the Work;
- iii. a trust fund;
- iv. a guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Generator Defendants; or
- v. a demonstration that one or more of the Settling Generator Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

(2) If the Settling Generator Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 59(b)(1)(iv) of this Consent Decree, Settling Generator Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Generator Defendants seek to demonstrate

their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 59.b.(1)(iv) or (v) they shall resubmit sworn statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the anniversary of the effective date of this Consent Decree.

(3) Settling Generator Defendants may change the form of financial assurance provided under Paragraphs 59.a. or 59.b. at any time, upon notice to and approval by U.S. EPA, provided that the new form of assurance meets the requirements of this Section.

(4) Settling Generator Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

XVII. CERTIFICATION OF COMPLETION

60. Completion of the Remedial Action.

a. Within 90 days after Settling Generator Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Generator Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Generator Defendants and U.S. EPA. If, after the pre-certification inspection, the Settling Generator Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to U.S. EPA for approval, with a copy to the State, pursuant to Section XIV [U.S. EPA Approval of Plans and Other Submissions] within 30 days of the inspection. In the report, a registered professional engineer and the Settling Generator Defendants' Project Coordinator shall state 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 shall be stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Generator Defendant or the Settling Generator Defendants' Project Coordinator:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, U.S. 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, U.S. EPA will notify Settling Generator Defendants in writing of the activities that must be undertaken by Settling Generator Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that U.S. EPA may only require Settling Generator Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with and no broader than the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 12.b. U.S. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Generator Defendants to submit a schedule to U.S. EPA for approval pursuant to Section XIV [U.S. EPA Approval of Plans and Other Submissions]. Settling Generator Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XXI [Dispute Resolution].

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b. If U.S. EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, U.S. EPA will so certify in writing to Settling Generator Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXIII [Covenants by Plaintiff]. Certification of Completion of the Remedial Action shall not affect Settling Generator Defendants' remaining obligations under this Consent Decree.

61. Completion of the Work

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

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

If, after review of the written report, U.S. EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, U.S. EPA will notify Settling Generator Defendants in writing of the activities that must be undertaken by Settling Generator Defendants pursuant to this Consent Decree to complete the Work, provided, however, that U.S. EPA may only require Settling Generator Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with and no broader than the "scope of the remedy selected in the ROD," as that term is defined in Paragraph 12.b. U.S. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Generator Defendants to submit a schedule to U.S. EPA for approval pursuant to Section XIV [U.S. EPA Approval of Plans and Other Submissions]. Settling Generator Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XXI [Dispute Resolution].

b. If U.S. EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Generator Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, U.S. EPA will so certify in writing to the Settling Generator Defendants.

XVIII. EMERGENCY RESPONSE

62. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Generator Defendants shall, subject to Paragraph 63, immediately take all appropriate action to

prevent, abate, or minimize such release or threat of release, and shall immediately notify the U.S. EPA's Project Coordinator, or, if the Project Coordinator is unavailable, U.S. EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Generator Defendants shall notify the Emergency Response Section, Region 5, U.S. EPA. Settling Generator Defendants shall take such actions in consultation with U.S. EPA's Project Coordinator or other available authorized U.S. EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Generator Defendants fail to take appropriate response action as required by this Section, and U.S. EPA takes such action instead, Settling Generator Defendants shall reimburse U.S. EPA all costs of the response action not inconsistent with the NCP pursuant to Section X [Reimbursement of Response Costs by Settling Defendants].

63. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States: (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site; or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXIII [Covenants by Plaintiff].

XIX. INDEMNIFICATION AND INSURANCE

64.a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Generator Defendants as U.S. EPA's authorized representatives under CERCLA Section 104(e). Settling Generator Defendants shall indemnify, save and hold

harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Generator Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Generator Defendants as U.S. EPA's authorized representatives under CERCLA Section 104(e). Further, the Settling Generator Defendants agree to pay the United States all costs it incurs including, but not limited to, the cost of attorney time and other expenses of litigation and settlement arising solely from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Generator Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Generator Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Generator Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Generator Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 64.a. and shall consult with Settling Generator Defendants prior to settling such claim.

65. Settling Generator Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling

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

66.a. No later than 15 days before commencing any on-site Work, Settling Generator Defendants shall require their contractors to secure, and maintain until the first anniversary of U.S. EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 60.b. of Section XVII [Certification of Completion] comprehensive general liability insurance and automobile insurance with limits of \$1 million, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Generator Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Generator Defendants in furtherance of this Consent Decree. Prior to commencement of the on-site Work under this Consent Decree, Settling Generator Defendants shall provide to U.S. EPA certificates of such insurance and a copy of each insurance policy.

b. Settling Generator Defendants shall require their contractors to resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree.

XX. FORCE MAJEURE

67. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Generator Defendants, of any entity controlled by Settling Generator Defendants, or of Settling Generator Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Generator Defendants' best efforts to fulfill the obligation. The requirement that the Settling Generator Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

68. 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 Generator Defendants shall notify orally U.S. EPA's Project Coordinator or, in his or her absence, U.S. EPA's Alternate Project Coordinator or, in the event both of U.S. EPA's designated representatives are unavailable, the Director of the Superfund Division, U.S. EPA Region 5, within 48 hours of when Settling Generator Defendants first knew that the event would cause a delay. Within 5 days thereafter, Settling Generator Defendants shall provide in writing to U.S. EPA: (1) an explanation and description of the reasons for the delay; (2) the anticipated duration of the delay; (3) a description of all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; (5) the Settling Generator Defendants' rationale for attributing such delay to a force majeure

event if they intend to assert such a claim; and (6) a statement as to whether, in the opinion of the Settling Generator Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Generator Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. A material failure to comply with the above requirements shall preclude Settling Generator Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Generator Defendants shall be deemed to know of any circumstance of which Settling Generator Defendants, any entity controlled by Settling Generator Defendants, or Settling Generator Defendants' contractors knew.

69. If U.S. 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, which agreement shall not be unreasonably withheld, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by U.S. EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If U.S. 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, U.S. EPA will notify the Settling Generator Defendants in writing of its decision.

70. If the Settling Generator Defendants elect to invoke the dispute resolution procedures set forth in Section XXI [Dispute Resolution], they shall do so no later than 15 days after receipt of U.S.

EPA's notice. In any such proceeding, Settling Generator Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Generator Defendants substantially complied with the requirements of Paragraphs 67 and 68, above. If Settling Generator Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Generator Defendants of the affected obligation of this Consent Decree identified to U.S. EPA and the Court.

XXI. DISPUTE RESOLUTION

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

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

73.a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by U.S. EPA shall be considered binding unless, within 21 days after the conclusion of the informal negotiation period, Settling Defendants invoke

the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 74 or Paragraph 75.

b. Within 21 days after receipt of Settling Defendants' Statement of Position, U.S. EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by U.S. EPA. U.S. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 74 or 75. Within 15 days after receipt of U.S. EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between U.S. EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 74 or 75, the parties to the dispute shall follow the procedures set forth in the paragraph determined by U.S. EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 74 or 75.

74. a. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or

any other items requiring approval by U.S. EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

b. An administrative record of the dispute shall be maintained by U.S. EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate and with prior notice to the Parties, U.S. EPA may allow the submission of supplemental statements of position by the parties to the dispute; provided, that all parties to this Consent Decree shall be served with such statements of position and supplemental statements.

c. The Director of the Superfund Division, U.S. EPA Region 5, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 74.b. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 74.d. and 74.e.

d. Any administrative decision made by U.S. EPA pursuant to Paragraph 74.c. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 20 days of receipt of U.S. EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion in accordance with the Federal Rules of Civil Procedure and any applicable local rules of this Court.

e. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious, contrary to the provisions of this Consent Decree or otherwise not in accordance with applicable law. Judicial review of U.S. EPA's decision shall be on the administrative record compiled pursuant to Paragraph 74.b.

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

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 73.a., the Director of the Superfund Division, U.S. EPA Region 5, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on the Settling Defendants unless, within 20 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph L of Section I of this Consent Decree [Background], judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

76. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless U.S. EPA or the Court agrees otherwise. Stipulated penalties

with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 77.

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

XXII. STIPULATED PENALTIES

78. Settling Generator Defendants shall be liable to the United States for stipulated penalties in the amounts set forth in Paragraphs 79 and 80 for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XX [Force Majeure]. "Compliance" by Settling Generator Defendants 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 this Consent Decree, the SOW, and any plans or other documents approved by U.S. EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

79. The following stipulated penalties shall accrue per violation per day.

PENALTY PER VIOLATION PER DAY

	<u>DAY 3 TO</u> <u>DAY 30</u>	<u>31 TO</u> <u>60 DAYS</u>	<u>OVER</u> <u>60 DAYS</u>
<u>REMEDY COMPONENT</u>			
Failure to Complete the following components of Remedial Action, according to the schedule set forth in the SOW:			

Repair and Maintain Existing Fence	\$1,000	\$2,500	\$3,750
Begin excavation and treatment of battery casings and contaminated soils	\$2,500	\$3,750	\$7,500
Installation of cover or excavation, to the groundwater table, of soils with lead levels above the site cleanup level (whichever applies)	\$2,500	\$3,750	\$7,500
Implementation of Phase I of the GMPP, in accordance with the schedule and requirements in that document	\$2,500	\$3,750	\$7,500
Implementation of an air emission and surface water monitoring program during the construction of the Remedial Action	\$2,500	\$3,750	\$7,500
Implementation of O&M groundwater (Phase II GMPP) monitoring according to the monitoring requirements and schedule contained in the GMPP.	\$2,500	\$3,750	\$7,500
Submission of a corrective measures plan for groundwater, if so directed by U.S. EPA	\$2,500	\$3,750	\$7,500

Implementation of corrective measures as required by U.S. EPA	\$2,500	\$3,750	\$7,500
Implementation of O&M requirements for cover system	\$2,500	\$3,750	\$7,500
Failure to take action to abate an endangerment under Section XVIII [Emergency Response]	\$2,500	\$3,750	\$7,500

80. The following stipulated penalties shall accrue per violation per day for material failure to submit timely or adequate reports (or other written documents) pursuant to Paragraphs 10, 23 and 44:

PENALTY PER VIOLATION PER DAY

	<u>DAY 3 TO DAY 30</u>	<u>31 TO 60 DAYS</u>	<u>OVER 60 DAYS</u>
Failure to submit the following reports and/or plans according to the schedule set forth in the SOW, and submission of the following reports and/or plans with a material defect:			
Monthly Progress Reports during RD/RA	\$ 500	\$1,000	\$2,500
Prefinal Inspection Report, Remedial Action Completion Report, Completion of Work Report	\$ 500	\$1,000	\$2,500

Quarterly Progress Reports during O&M	\$ 500	\$1,000	\$2,500
RD/RA Work Plan	\$3,750	\$5,000	\$7,500
Field Sampling Plan and RD Quality Assurance Project Plan	\$3,750	\$5,000	\$7,500
Phase I and Phase II GMPPs	\$3,750	\$5,000	\$7,500
Performance Standard Verification Plan	\$3,750	\$5,000	\$7,500
Design Plans and Specifications	\$3,750	\$5,000	\$7,500
Contingency Plan	\$3,750	\$5,000	\$7,500
Health and Safety Plan	\$3,750	\$5,000	\$7,500
Construction Quality Assurance Plan	\$3,750	\$5,000	\$7,500
Operation and Maintenance Plan	\$3,750	\$5,000	\$7,500
O&M Quality Assurance Plan	\$2,500	\$3,750	\$5,000

81. In the event that U.S. EPA assumes performance of a portion or all of the Work pursuant to Paragraph 94 (Work Takeover) of Section XXIII [Covenants by Plaintiff], Settling Generator Defendants shall be liable for a stipulated penalty in the amount of \$500,000.

82. All penalties shall begin to accrue on the third day after either the day when the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day

of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XIV [U.S. EPA Approval of Plans and Other Submissions], during the period, if any, beginning on the 31st day after U.S. EPA's receipt of such submission until the date that U.S. EPA notifies Settling Generator Defendants of any deficiency; (2) with respect to a decision by the Director of the Superfund Division, U.S. EPA Region 5, under Paragraph 74.c. or 75.a. of Section XXI [Dispute Resolution], during the period, if any, beginning on the 21st day after the date that Settling Generator Defendants' reply to U.S. EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XXI [Dispute Resolution], during the period, if any, beginning on the 31st day after the Court's receipt of the United States' final submission (which shall be filed in accordance with a briefing schedule to be agreed upon by the Parties, or otherwise ordered by the Court) regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

83. Following U.S. EPA's determination that Settling Generator Defendants have failed to comply with a requirement of this Consent Decree, U.S. EPA shall give Settling Generator Defendants written notification of the same and describe the noncompliance. U.S. EPA may send the Settling Generator Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph 82 regardless of whether U.S. EPA has notified the Settling Generator Defendants of a violation.

84. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Generator Defendants' receipt from U.S. EPA of a demand for

payment of the penalties, unless Settling Generator Defendants invoke the Dispute Resolution procedures under Section XXI [Dispute Resolution]. All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, shall indicate that the payment is for stipulated penalties, and shall reference U.S. EPA Region 5, Site/Spill ID No. 05-H5, U.S. Case Number 90-11-3-279b, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVIII [Notices and Submissions].

85.a. Notwithstanding the provisions of the preceding paragraph or the provisions of Paragraph 87 (pertaining to a decision or order of U.S. EPA, this Court or an Appellate Court), the Settling Generator Defendants may defer the payment of stipulated penalties until the Certification of Completion of the Remedial Action (under Section XVII of this Consent Decree) if the stipulated penalties that otherwise would be payable by the Settling Generator Defendants are deposited in an interest bearing escrow account, established by the Settling Generator Defendants, that could be debited or closed only by U.S. EPA, in a federally-insured bank duly chartered in the State of Ohio. If such an escrow account is so established, the Settling Generator Defendants shall send to the United States, as provided in Section XXVIII [Notices and Submissions], a copy of the transmittal letter and check paying the stipulated penalties, 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.

b. If the Remedial Action is completed within the time frame specified in the Statement of Work, U.S. EPA will waive any stipulated penalties otherwise payable due to construction delays.

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

87. Penalties shall continue to accrue as provided in Paragraph 82 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of U.S. EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to U.S. EPA within 15 days of the agreement or the receipt of U.S. 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 Generator Defendants shall pay all accrued penalties determined by the Court to be owed to U.S. EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c. below;

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

88.a. If Settling Generator Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as Interest. Settling Generator

Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the 31st day following the Settling Generator Defendants' receipt of demand made pursuant to Paragraph 83.

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

c. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Generator Defendants' violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to CERCLA Section 122(l), 42 U.S.C. § 9622(1). Provided, however, that the United States shall not seek civil penalties pursuant to CERCLA Section 122(l) for any violation for which a stipulated penalty is provided herein, except in the case of an intentional violation of the Consent Decree.

XXIII. COVENANTS BY PLAINTIFF

89. a. In consideration of:

(1) the actions that will be performed and the payments that will be made by the Settling Generator Defendants under this Consent Decree;

(2) the payments that will be made, and the performance of the actions set forth in Paragraphs 28 (Notice of Record and Title Commitment), 29 (Provision of Access by Settling Owner/Operator Defendants), and 30 (Long Term Access and Land Use Restriction Requirements) by the Settling Owner/ Operator Defendants; and

(3) the payments that will be made by the Settling Federal Agencies under the terms

of the Consent Decree, and except as specifically provided in Paragraphs 90, 91 and 93 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants, and U.S. EPA covenants not to take administrative action against the Settling Federal Agencies pursuant to CERCLA Sections 106, 107(a) and 113, 42 U.S.C. §§ 9606, 9607 and 9613, and RCRA Section 7003, 42 U.S.C. § 6973, relating to the Site. Except with respect to future liability, the United States' covenants shall take effect upon the receipt by U.S. EPA of the payments required by Paragraphs 35 and 36 of Section X [Reimbursement of Response Costs by Settling Defendants], and U.S. EPA's covenants not to take administrative action against the Settling Federal Agencies shall take effect upon receipt by U.S. EPA of the payments required by Paragraph 40.a. of Section XI (Reimbursement of Response Costs by Settling Federal Agencies). With respect to future liability, these covenants not to sue and covenants not to take administrative action shall take effect upon Certification of Completion of Remedial Action by U.S. EPA pursuant to Paragraph 53 of Section XVII [Certification of Completion].

b. The United States' covenants are conditioned upon the satisfactory performance by Settling Generator Defendants and Settling Owner/Operator Defendants, of their respective obligations under this Consent Decree, and U.S. EPA's covenants not to take administrative action against the Settling Federal Agencies, are conditioned upon the satisfactory performance by the Settling Federal Agencies of their obligations under this Consent Decree. The United States' covenants extend only to the Settling Generator Defendants and the Settling Owner/Operator Defendants. U.S. EPA's covenants not to take administrative action extend only to the Settling Federal Agencies and do not extend to any other persons.

90. United States' Pre-certification Reservations.

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

(1) conditions at the Site, previously unknown to U.S. EPA, are discovered, or

(2) information, previously unknown to U.S. EPA, is received, in whole or in part,

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

b. If the provisions of Paragraph 90.a. are met with regard to unknown conditions or new information, U.S. EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies to perform further response actions relating to the Site.

91. United States' Post-certification reservations.

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

(1) conditions at the Site, previously unknown to U.S. EPA, are discovered, or

(2) information, previously unknown to U.S. EPA, is received, in whole or in part,

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

b. If the provisions of Paragraph 91.a. are met with regard to unknown conditions or new information, U.S. EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agencies to perform further response actions relating to the Site.

92.a. For purposes of Paragraph 90, the information and conditions known to U.S. EPA shall include only that information and those conditions known to U.S. EPA as of the effective date of this Consent Decree, as set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision.

b. For purposes of Paragraph 91, the information and the conditions known to U.S. EPA shall include only that information and those conditions known to U.S. EPA as of the date of Certification of Completion of the Remedial Action, as set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by U.S. EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

93. General reservations of rights. The covenants set forth above do not pertain to any matters other than those expressly specified in Paragraph 89. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and U.S. EPA and the federal natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agencies, with respect to all other matters, including but not limited to, the following:

a. claims based on a failure by Settling Generator Defendants, Settling Owner/

Operator Defendants, or the Settling Federal Agencies to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

c. liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by U.S. EPA;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that U.S. EPA determines are necessary to achieve Performance Standards subject to petition for technical impracticability, but that cannot be required pursuant to Paragraph 12 (Modification of the SOW or Related Work Plans).

94. Work Takeover In the event U.S. EPA determines that Settling Generator Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, U.S. EPA may assume the performance of all or any portions of the Work as U.S. EPA determines necessary. Settling Generator Defendants may invoke the procedures set forth in Paragraph 73 of Section XXI [Dispute Resolution], to dispute U.S. EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future

Response Costs that Settling Generator Defendants shall pay pursuant to Section X [Reimbursement of Response Costs by Settling Defendants].

95. The United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXIV. COVENANTS BY SETTLING DEFENDANTS.

96. Covenant Not to Sue. Subject to the reservations in Paragraph 97, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site, the Work, past response actions, and Past and Future Response Costs (as defined herein) or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, and 113, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, and 9613, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113, 42 U.S.C. §§ 9607 or 9613, related to the Site, or

c. except as provided in Section XXI [Dispute Resolution], any claims arising out of response activities at the Site, including claims based on U.S. EPA's selection of response actions, oversight of response activities or approval of plans for such activities; provided, however, that Settling Defendants shall be entitled to assert a claim against the United States alleging that Future Response Costs are inconsistent with the NCP, in accordance with Section XXI [Dispute Resolution].

97.a. Each Settling Defendant reserves, and this Consent Decree is without prejudice to, contribution claims against the Settling Federal Agencies in the event any claim not within the Matters Addressed by this Consent Decree is asserted by any third party or any claim is asserted by the United States against a Settling Defendant under the authority of or under 90, 91 and 93 of Section XXIII [Covenants by Plaintiff], but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the third party or the United States.

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

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

XXV. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

99. 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.

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

101. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim except as provided in a Case Management Order entered by this Court.

102. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 20 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 15 days of service or receipt of any Motion for Summary Judgment and within 15 days of receipt of any order from a court setting a case for trial.

103. 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, which proceeding is premised on any right to modify the SOW or any reservation of rights or reopener set forth in Section VII [Remedy Review] or Section XXIII [Covenants by Plaintiff], Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXIII [Covenants by Plaintiff].

XXVI. ACCESS TO INFORMATION

104. Settling Defendants shall provide to U.S. EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to U.S. 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.

105.a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with CERCLA Section 104(e)(7), 42 U.S.C. § 9604(e)(7), and 40

C.F.R. § 2.203(b). Documents or information determined to be confidential by U.S. 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 U.S. EPA, or if U.S. EPA has notified Settling Defendants that the documents or information are not confidential under the standards of CERCLA Section 104(e)(7), the public may be given access to such documents or information without further notice to Settling Defendants.

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

106. Except as provided in the Confidentiality Agreement, no claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXVII. RETENTION OF RECORDS

107. Until 10 years after the Settling Generator Defendants' receipt of U.S. EPA's certification pursuant to Paragraph 60.b. of Section XVII [Certification of Completion], Settling Generator Defendants shall preserve and retain, at a location to be determined by the Settling Generator Defendants within 6 months after the effective date of this Consent Decree, one copy of 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 any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Generator Defendants' receipt of U.S. EPA's notification pursuant to Paragraph 60.b. Section XVII [Certification of Completion], Settling Generator Defendants shall also instruct their contractors and agents to preserve one copy of all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

108. At the conclusion of the document retention period established in Paragraph 107, Settling Generator Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Generator Defendants shall deliver any such records or documents to U.S. EPA. The Settling Generator Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege or protection recognized by federal law. If the Settling Generator Defendants assert such a privilege or protection, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or

information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege or protection asserted by Settling Generator Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

109. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after reasonable inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all U.S. EPA requests for information pursuant to CERCLA Sections 104(e) and 122(e), 42 U.S.C. §§ 9604(e) and 9622(e), and RCRA Section 3007, 42 U.S.C. § 6927.

110. Each Settling Federal Agency hereby certifies that: (1) it has complied, and will continue to comply, with all applicable Federal record retention laws, regulations, and policies; (2) to the best of its knowledge and belief, after reasonable inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since being notified of potential liability by any Settling Generator Defendant regarding the Site; and (3) it has fully complied with any and all U.S. EPA requests for information pursuant to CERCLA Sections 104(e) and 122(e), 42 U.S.C. § 9604(e) and 9622(e), and RCRA Section 3007, 42 U.S.C. § 6927.

XXVIII. NOTICES AND SUBMISSIONS

111. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. For purposes of complying with their collective obligations under this Section, Settling Generator Defendants may act or respond through an authorized representative. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, U.S. EPA, the State, the Settling Federal Agencies, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
Re: DOJ # 90-11-3-279B

Chief, Environmental Defense Section
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
Re: DOJ # 90-11-3-891

Director, Superfund Division
U.S. EPA, Region 5
77 W. Jackson Blvd.
Mail Code S-6J
Chicago, IL 60604

John J. O'Grady
U.S. EPA Remedial Project Manager
U.S. EPA, Region 5
Mail Code SR-6J
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Sherry L. Estes, Esq.
Associate Regional Counsel
U.S. EPA, Region 5
Mail Code C-14J
77 W. Jackson Blvd.
Chicago, Illinois 60604-3590

As to the State of Ohio:

Greg Youngstrom
Site Manager
Ohio EPA, DERR
S.W. District Office
401 E. 5th St.
Dayton, Ohio 45402-2911

As to the Settling Generator Defendants that are members of the United Scrap Lead
Respondent Group (as specified in Appendix D):

Michael A. Cyphert, Esq.
Thompson, Hine & Flory LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114-1216

As to Settling Generator Defendants' Project Coordinator:

(The Individual Selected Under Paragraph 56)

As to Settling Generator Defendant, General Motors Corporation:

Douglas G. Haynam, Esq.
Fuller & Henry
One Seagate, 17 Floor
P.O. Box 2088
Toledo, OH 43603-2088

As to Settling Generator Defendant, Navistar International Transportation Corporation:

Laurence A. Levine, Esq.
Latham & Watkins
233 S. Wacker Drive
Suite 5800, Sears Tower
Chicago, IL 60606

As to the Settling Owner/Operator Defendants:

Jacob A. Myers, Esq.
Myers & Frayne
18 West 1st St.
Suite 200
Dayton, OH 45402

XXIX. EFFECTIVE DATE

112. 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.

XXX. RETENTION OF JURISDICTION

113. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Parties 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 XXI [Dispute Resolution] hereof.

XXXI. APPENDICES

114. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the ROD, with the 1997 amendments; "Appendix B" is the SOW; "Appendix C" is a map of the Site; "Appendix D" is the complete list of the Settling Generator Defendants; "Appendix E" is the complete list of Settling Federal Agencies; "Appendix F" is the complete list of Settling Owner/Operator Defendants; and "Appendix G" identifies certain land use restrictions to be imposed as part of the remedy.

XXXII. COMMUNITY RELATIONS

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

XXXIII. MODIFICATION

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

117. Except as provided in Paragraph 12 ("Modification of the SOW or related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Generator Defendants, and the Court. Prior to

providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between U.S. EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Generator Defendants.

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

XXXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

119. 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 CERCLA Section 122(d)(2), 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree, as lodged, without further notice.

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

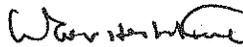
XXXIV. SIGNATORIES/SERVICE

121. Each undersigned representative of a Settling Party to this Consent Decree and the Assistant Attorney General for the 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.

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

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

SO ORDERED THIS 8th DAY OF November, 1998



WALTER H. RICE

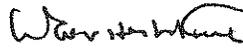
United States District Judge

NUNC-PRO-TUNC, September 28, 1998

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

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

SO ORDERED THIS 6th DAY OF November, 1998



WALTER H. RICE

United States District Judge

NUNC-PRO-TUNC, September 28, 1998

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Atlas Lederer Co., et al., relating to the United Scrap Lead Superfund Site.

FOR PLAINTIFF UNITED STATES OF AMERICA

Date: _____

LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division

Date: _____

GREGORY L. SUKYS
Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044
(202) 514-2068/616-6584(FAX)

Date: _____

CECILIA KIM
Attorney
Environmental Defense Section
U.S. Department of Justice
P.O. Box 23986
Washington, D.C. 20026-3986
(202) 514-3126/305-0739/616-2426 (FAX)

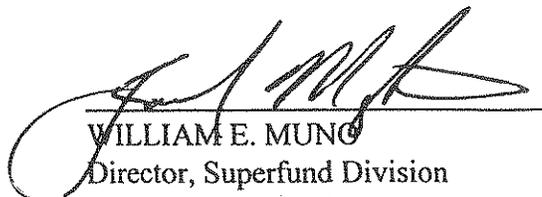
SHARON J. ZEALEY
United States Attorney
Southern District of Ohio

Date: _____

PATRICK D. QUINN
Assistant U.S. Attorney
Southern District of Ohio
Federal Building, 602
200 W. Second St.
Dayton, Ohio 45400
(937) 225-2910/2564 (FAX)

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Atlas Lederer Co., et al., relating to the United Scrap Lead Superfund Site.

Date: 7/28/98

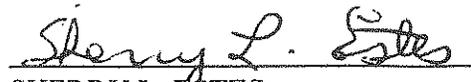


WILLIAM E. MUNO

Director, Superfund Division

U.S. Environmental Protection Agency, Region 5

Date: 7/22/98



SHERRY L. ESTES

Associate Regional Counsel

U.S. Environmental Protection Agency, Region 5

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