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1 I. BACKGROUND

2 1. The United States of America ("United States"),
3 on behalf of the United States Environmental Protection Agency
4 ("EPA") and the federal Natural Resource Trustees (as defined in
5 paragraph 31(J)), and the other Natural Resource Trustees (also
6 defined in paragraph 31(J)) are filing Complaints in this matter,
7 concurrently with this Consent Decree, under Sections 106 and 107
8 of the Comprehensive Environmental Response, Compensation, and
9 Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9606 and 9607, as
10 amended, and Section 311 of the Federal Water Pollution Control
11 Act, 33 U.S.C. § 1321. This Consent Decree addresses the St.
12 Paul Waterway Problem Area sediment remedial action, associated
13 monitoring, reporting, contingency planning activities, and
14 natural resource damages matters with respect to the Settling
15 Defendants.

16 2. The United States and the other Natural Resource
17 Trustees in their Complaints seek: (i) reimbursement of monies
18 and costs incurred by the United States for its investigations,
19 studies, response and enforcement activities, and other necessary
20 response actions at the St. Paul Waterway Problem Area of the
21 Commencement Bay Nearshore/Tideflats (CB/NT) Superfund Site in
22 Tacoma, Washington, together with accrued interest; (ii) an
23 injunction requiring the Settling Defendants to perform Work at
24 the St. Paul Waterway Problem Area, as set forth in the attached
25 Monitoring, Reporting and Contingency Plan (the "Monitoring
26 Plan") (Exhibit A), and in conformity with EPA's Record of
27 Decision for the CB/NT site dated September 30, 1989 ("ROD",
28 ST. PAUL WATERWAY CONSENT DECREE - Page 4

1 Exhibit B), the National Contingency Plan ("NCP"), 40 C.F.R. Part
2 300, as amended, 55 Fed. Reg. 8666 (March 8, 1990), and CERCLA;
3 (iii) recovery of costs that will be incurred by EPA in
4 connection with the Work to be performed in (ii) above; (iv) the
5 submittal of a Superfund Completion Report regarding the sediment
6 remedial action for the St. Paul Waterway Problem Area; (v)
7 natural resource damages and associated costs for the St. Paul
8 Waterway Problem Area; and (vi) such other relief as the Court
9 finds appropriate.

10 3. In accordance with Sections 104(b)(2) and
11 121(f)(1)(F) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and
12 9621(f)(1)(F), EPA has notified the State of Washington
13 Department of Ecology ("Ecology") of negotiations with
14 potentially responsible parties ("PRPs") regarding the scope of
15 the remedial action for the St. Paul Waterway Problem Area, and
16 EPA has provided the State of Washington with an opportunity to
17 participate in these negotiations and to be a party to any
18 settlement. As described further in paragraph 20 et seq.,
19 Ecology previously entered into a State Consent Decree (Wa. State
20 Dept. of Ecology v. Simpson Tacoma Kraft Co. and Wa. State Dept.
21 of Natural Resources, Pierce County Superior Court No. 87-2-
22 07673-9, December 24, 1989) (the "State Consent Decree") for
23 implementation of the St. Paul Waterway Area Remedial Action and
24 Habitat Restoration Project. EPA has also notified the Puyallup
25 Tribe of Indians ("Puyallup Tribe") of these negotiations. The
26 Puyallup Tribe has participated in these negotiations consistent
27 with the Cooperative Agreement between EPA and the Puyallup Tribe
28 ST. PAUL WATERWAY CONSENT DECREE - Page 5

1 | dated April 28, 1989, under which the Puyallup Tribe is a
2 | supporting agency for remedial actions at the Site. All other
3 | federal, state, and local agencies with jurisdiction which have
4 | issued permits for the remedial work have also been notified,
5 | including the U.S. Army Corps of Engineers, the State of
6 | Washington Department of Fisheries, and the City of Tacoma.

7 | 4. In accordance with Section 122(j)(1) of CERCLA,
8 | 42 U.S.C. § 9622(j)(1), EPA has notified the federal, state, and
9 | tribal natural resource trustees of the EPA's negotiations with
10 | the potentially responsible parties regarding the release or
11 | threatened release of hazardous substances at the St. Paul
12 | Waterway Problem Area and CB/NT site which may have resulted in
13 | injury to natural resources under their trusteeship. EPA has
14 | encouraged the participation of the federal, state and tribal
15 | natural resource trustees in such negotiations. The natural
16 | resource trustees for the St. Paul Waterway Problem Area and
17 | Commencement Bay are: (i) the National Oceanic and Atmospheric
18 | Administration of the U.S. Department of Commerce, (ii) the U.S.
19 | Department of Interior, (iii) the Washington Department of
20 | Ecology (on behalf of the Washington Department of Fisheries, the
21 | Washington Department of Natural Resources, and the Washington
22 | Department of Wildlife), (v) the Puyallup Tribe of Indians, and
23 | (vi) the Muckleshoot Indian Tribe. These parties (the "Natural
24 | Resource Trustees") have participated in the negotiations, and
25 | have reached a settlement with the Settling Defendants of their
26 | claims for damages due to injury to, destruction of, or loss of
27 | natural resources in the St. Paul Waterway Problem Area. The
28 | ST. PAUL WATERWAY CONSENT DECREE - Page 6

1 Natural Resource Trustees and the Settling Defendants agree that,
2 on the basis of the preliminary information available regarding
3 natural resource damages at the St. Paul Waterway Problem Area,
4 settlement of the claims as set forth in this Consent Decree is
5 in the public interest and is made in good faith and after arms-
6 length negotiations, and that entry of this Consent Decree is the
7 most appropriate means to resolve the matters covered herein.

8 The Settlement Agreement reached between the Settling Defendants
9 and the Natural Resource Trustees also provides a mechanism by
10 which the Settling Defendants and other potentially responsible
11 parties in Commencement Bay can participate in a Bay-wide natural
12 resource damage assessment. This Settlement Agreement is
13 attached to this Consent Decree as Exhibit C, and by this
14 reference incorporated herein and made a part of this Consent
15 Decree.

16 5. Pursuant to Section 105 of CERCLA, 42 U.S.C.
17 § 9605, as amended, EPA placed the CB/NT site in Tacoma,
18 Washington (the "Site" as defined in paragraph 31(S) below) on
19 the National Priorities List, set forth at 40 C.F.R. Part 300,
20 Appendix B, by publication in the Federal Register on
21 September 8, 1983, 48 Fed. Reg. 40,658.

22 6. Because of the complexity of the CB/NT site,
23 Superfund response actions at the CB/NT site are currently
24 coordinated under seven separate operable units managed primarily
25 by EPA and Ecology, including: (i) Operable Unit 01 - CB/NT
26 Sediments; (ii) Operable Unit 02 - Asarco Tacoma Smelter; (iii)
27 Operable Unit 03 - Tacoma Tar Pits; (iv) Operable Unit 04 -

1 Asarco Off-Property; (v) Operable Unit 05 - CB/NT Sources; (vi)
2 Operable Unit 06 - Asarco Sediments; and (vii) Operable Unit 07 -
3 Asarco demolition. This Consent Decree involves the St. Paul
4 Waterway sediment contamination, one of eight Problem Areas
5 within Operable Unit 01 of the Site identified for remedial
6 action in the ROD (Exhibit B).

7 7. In 1983, in response to a release or a
8 substantial threat of a release of hazardous substances at or
9 from the Site, EPA entered into a CERCLA Cooperative Agreement
10 with Ecology to conduct a Remedial Investigation and Feasibility
11 Study ("RI/FS") at the Site. The results of the RI were
12 published in August 1985, and the results of the FS were
13 published in February 1989.

14 8. Pursuant to Section 117 of CERCLA, 42 U.S.C.
15 § 9617, EPA published notice of the completion of the RI/FS and
16 of the proposed plan for remedial action on February 24, 1989,
17 and provided an opportunity for public comment on the proposed
18 remedial action through June 24, 1989. The ROD includes a
19 response to each of the significant comments, criticisms, and new
20 data submitted during the public comment period.

21 9. On September 30, 1989, EPA issued the ROD for two
22 operable units of the CB/NT site. The ROD addresses both
23 sediment remediation (Operable Unit 01) and source control
24 (Operable Unit 05). The ROD was concurred in by Ecology and the
25 Puyallup Tribe, with whom EPA has entered into Superfund
26 Cooperative Agreements for remedial activities at the Site.
27 Under a Cooperative Agreement with Ecology, effective May 1,
28 ST. PAUL WATERWAY CONSENT DECREE - Page 8

1 1989, EPA is designated as the lead agency for remediation of
2 contaminated sediments and Ecology as the lead agency for source
3 control of hazardous substances. The Cooperative Agreement with
4 the Puyallup Tribe is described in paragraph 3 above.

5 10. As described in the RI/FS for the CB/NT site,
6 there were nine Problem Areas of contaminated sediments and
7 sources of hazardous substances contamination. The ROD addressed
8 eight of these Problem Areas, including the St. Paul Waterway
9 Problem Area. The ninth Problem Area, the Asarco Sediments, is
10 now a separate operable unit of the CB/NT site and will be the
11 subject of a subsequent ROD. This Consent Decree addresses the
12 St. Paul Waterway Problem Area.

13 11. The St. Paul Waterway Problem Area contains
14 contaminated sediments adjacent to the Tacoma Kraft Mill
15 ("Mill"), now owned and operated by the Simpson Tacoma Kraft
16 Company ("Simpson"). The Mill is situated on a peninsula of
17 filled tidelands projecting into Commencement Bay between the
18 mouths of the Puyallup River and the St. Paul Waterway.

19 12. Simpson, a Washington corporation, owns and
20 operates the Mill facilities, which include a secondary
21 wastewater treatment plant, uplands, and the adjoining St. Paul
22 Waterway landward of the inner harbor line. Pulp and paper
23 operations began at the Mill in 1927 under the ownership of the
24 Union Bag Company, which operated the Mill until 1930. The St.
25 Regis Paper Company acquired the Mill in 1930 and operated it
26 until 1985, when St. Regis Paper Company merged with Champion
27 International Corporation ("Champion").

1 13. Simpson acquired the Mill from Champion in August
2 1985. The State of Washington owns the harbor area (the area
3 between the inner and outer harbor lines) and adjacent aquatic
4 lands, which are managed on behalf of the state by the State of
5 Washington Department of Natural Resources ("DNR"). Simpson
6 leases state-owned aquatic lands from the state by and through
7 DNR, as did previous mill owners and operators. Simpson and DNR
8 have entered into a lease and related agreement which include use
9 of the lands for the purposes set forth in this Consent Decree.

10 14. The bottom sediments in the St. Paul Waterway
11 Problem Area and adjacent to the Mill are contaminated by
12 chemicals and organic debris. As documented in the RI/FS, the
13 St. Paul Waterway Problem Area was among the most biologically
14 stressed areas in the Commencement Bay tideflats, with
15 concentrations of several chemicals over 1,000 times higher than
16 reference area concentrations. These findings were confirmed by
17 sampling of the Site by Parametrix, Inc., consultants for
18 Simpson, in their Tacoma Kraft Mill Sediment Investigation
19 submitted to Ecology in 1986.

20 15. Several studies have been conducted to
21 characterize the nature and extent of the hazardous substances,
22 pollutants and contaminants in the St. Paul Waterway Problem
23 Area, as well as any such substances present in the Puyallup
24 River sediments that were utilized for Simpson's sediment capping
25 action under the State Consent Decree (see paragraphs 3 and 20).
26 These studies have been described, referenced, and incorporated
27 into a document entitled Project Analysis for the St. Paul
28 ST. PAUL WATERWAY CONSENT DECREE - Page 10

1 Waterway Area Remedial Action and Habitat Restoration Project
2 ("Project Analysis", July 1987), consisting of a Project
3 Overview, SEPA Environmental Checklist and related environmental
4 assessment, ten technical appendices including Focused
5 Feasibility Study for the St. Paul Waterway Area (Appendix VI),
6 and other applicable studies referenced therein, including
7 relevant portions of the RI/FS as supplemented by Supplemental
8 Information Packets (September and December 1987).

9 16. The 17-acre St. Paul Waterway Problem Area was
10 identified for remedial action as a result of sediment
11 contamination adjacent to the Mill, which included five acres of
12 sediments near the old mill outfall with a high level of chemical
13 contamination and some organic debris, an area to the southeast
14 with a high level of organic debris and some chemical
15 contamination and the bottom of the entrance to the St. Paul
16 Waterway itself, which was contaminated by wood chips.

17 17. The principal chemicals identified in the RI/FS
18 as contaminants in the St. Paul Waterway Problem Area
19 included 4-methylphenol, phenol, 2-methoxyphenol, 1-methyl-2-
20 (methylethyl) benzene and other compounds, which are known to be
21 toxic to marine life. Measurements taken during the RI showed
22 concentrations of these chemicals in the sediments that exceeded
23 the cleanup goals and standards subsequently specified in the
24 CB/NT ROD. The RI also showed that the organic debris present in
25 sediments at the St. Paul Waterway problem area was in sufficient
26 quantities to restrict biological productivity.

27

28 ST. PAUL WATERWAY CONSENT DECREE - Page 11

1 18. The hazardous substances, pollutants, and
2 contaminants at the St. Paul Waterway Problem Area were primarily
3 released from the Mill.

4 19. Simpson has taken measures to reduce the levels
5 of hazardous substances or contaminants released from the Mill,
6 including a source control program and the installation of a new
7 Clean Water Act NPDES outfall for its secondary wastewater
8 treatment plant and additional stormwater and chip control
9 systems. Pursuant to delegated authority under the Clean Water
10 Act, Ecology required the NPDES outfall relocation. Ecology is
11 revising the Mill's NPDES permit in 1990.

12 20. On December 24, 1987, Simpson, Champion, and DNR
13 entered into a State Consent Decree with Ecology under applicable
14 hazardous waste cleanup laws (see paragraph 3 above). The State
15 Consent Decree required Simpson to isolate toxic concentrations
16 of contaminated sediments from the marine environment by
17 placement of a cap of clean sediments from a nearby section of
18 the Puyallup River over the contaminated sediments. These
19 activities were conducted between December 1987 and September
20 1988 and are described in more detail in the Superfund Completion
21 Report (Exhibit D). A habitat restoration program designed to
22 mitigate adverse biological impacts, to create intertidal habitat
23 for marine biota, and to support a productive biological
24 community was implemented along with the capping activities. The
25 project was designed to be consistent with all applicable,
26 relevant and appropriate laws and to meet state and local

27

28 ST. PAUL WATERWAY CONSENT DECREE - Page 12

1 environmental standards, including those under state hazardous
2 waste cleanup laws.

3 21. EPA was not a party to the 1987 State Consent
4 Decree and at the time the State Consent Decree was entered did
5 not formally approve of, concur in, or oversee the sediment
6 cleanup action, which was completed prior to issuance of EPA's
7 CB/NT ROD.

8 22. EPA's decision on the final remedial action plan
9 to be implemented under CERCLA and the NCP for the St. Paul
10 Waterway Problem Area is described in the CB/NT ROD.

11 23. In the ROD, EPA determined that there are five
12 major elements of the selected remedy for the Site sediments and
13 sources that will be applied, as appropriate, to each Problem
14 Area:

15 (A) Site Use Restrictions - To protect human health
16 by limiting access to edible resources prior to and
17 during implementation of source and sediment remedial
18 activities.

19 (B) Source Controls - To be implemented to prevent
20 recontamination of sediments.

21 (C) Natural Recovery - Included as an optional (and
22 preferred) remediation strategy for marginally
23 contaminated sediments that are predicted to achieve
24 acceptable sediment quality through burial and mixing
25 with naturally accumulating clean sediments within a
26 ten year period.

1 (D) Sediment Remedial Action - To address
2 contaminated sediments that are not expected to
3 naturally recover within ten years following
4 implementation of all known, available, and reasonable
5 source control measures.

6 (E) Source and Sediment Monitoring - To refine
7 cleanup volume estimates, characterize the
8 effectiveness of source controls, and implement long-
9 term monitoring of the sediment remedial actions(s) to
10 ensure long-term protectiveness of the remedy.

11 24. For the St. Paul Waterway Problem Area, the ROD
12 specifies that source control, confinement of contaminated
13 sediments, and source and sediment monitoring are the selected
14 remedy. Capping in place was specifically identified as the most
15 appropriate option for confinement of contaminated sediments in
16 the St. Paul Waterway Problem Area, given the type, extent and
17 severity of the sediment contamination. While the actions
18 previously implemented by Simpson in the St. Paul Waterway
19 Problem Area under the 1987 State Consent Decree implemented and
20 largely accomplished EPA's selected remedy for the cleanup of
21 contaminated sediments in the St. Paul Waterway Problem Area as
22 determined in the ROD, revisions in the Monitoring Plan are
23 necessary to ensure consistency of the St. Paul Waterway action
24 with EPA's ROD and with the settlement of natural resource damage
25 claims. Source control and related activities are being
26 implemented under the Mill's NPDES permit administered by
27 Ecology.

1 25. Pursuant to Section 121(d)(1), the Settling
2 Parties agree that the sediment remedial action previously
3 conducted by the Settling Defendants at the St. Paul Waterway
4 under the 1987 State Consent Decree, subject to monitoring and
5 maintenance by the Settling Defendants in accordance with the
6 provisions of this Consent Decree and attached Monitoring Plan
7 (Exhibit A), will attain a degree of cleanup that assures
8 protection of human health and the environment.

9 26. In signing this Decree, defendants Simpson,
10 Champion, and DNR deny any and all legal and equitable liability
11 under any federal, state, local, or tribal statute, regulation,
12 or common law for any endangerment, nuisance, response, removal,
13 or remedial costs incurred or to be incurred by the United
14 States, the State of Washington, or other person as a result of
15 the release or threat of release of hazardous substances to, at,
16 from or near the Site. Pursuant to 42 U.S.C. § 9622(d)(1)(B),
17 entry of this Consent Decree is not an acknowledgement by
18 Settling Defendants that any release or threatened release of a
19 hazardous substance constituting an imminent and substantial
20 endangerment to human health or the environment has occurred or
21 exists at the Site. Defendants do not admit and retain the right
22 to controvert any of the factual or legal statements or
23 determinations made herein in any judicial or administrative
24 proceeding except an action to enforce this Consent Decree. They
25 do agree, however, to the Court's jurisdiction over this matter.
26 This Consent Decree shall not be admissible in any judicial or

1 administrative proceeding as proof of liability or an admission
2 of any fact dealt with herein, but it shall be admissible in an
3 action to enforce this Consent Decree.

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

6 27. The Settling Parties agree to the entry of this
7 Consent Decree and agree to be bound by its terms. The Settling
8 Parties recognize, and the Court by entering this Consent Decree
9 finds, that implementation of this Consent Decree will fully
10 accomplish the St. Paul Waterway Problem Area sediment remedial
11 action in accordance with EPA's ROD for the CB/NT site, will
12 resolve natural resource damage claims with respect to the St.
13 Paul Waterway Problem Area, address certain matters relating to
14 the CB/NT site, and will avoid prolonged and complicated
15 litigation between the Settling Parties, and that the entry of
16 this Consent Decree is in the public interest.

17 II. JURISDICTION

18 28. This Court has jurisdiction over the subject
19 matter herein, pursuant to 28 U.S.C. §§ 1331 and 1345 and
20 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has
21 personal jurisdiction over the Settling Defendants, which solely
22 for purposes of this Consent Decree and the underlying Complaint,
23 waive all objections and defenses that they may have to
24 jurisdiction of the Court or to venue in this District. The
25 Complaint states claims against the Settling Defendants upon
26 which relief may be granted.

1 III. PARTIES BOUND

2 29. This Consent Decree applies to and is binding
3 upon the United States, the U.S. Environmental Protection Agency,
4 the Natural Resource Trustees, and the undersigned Settling
5 Defendants, and all of their respective directors, officers,
6 employees, agents, successors, trustees, and assigns.

7 30. The Settling Defendants shall be responsible for
8 ensuring that their contractors and subcontractors perform the
9 Work in accordance with this Consent Decree and Monitoring Plan
10 and shall include the requirement to perform the Work in
11 accordance with this Consent Decree and Monitoring Plan in their
12 contracts and subcontracts. Each contractor and subcontractor
13 hired by Settling Defendants to perform Work under this Consent
14 Decree shall be deemed to be related by contract to the Settling
15 Defendants within the meaning of Section 107(b)(3) of CERCLA, 42
16 U.S.C. § 9607(b)(3). Thus, as to acts or omissions of
17 contractors, the Settling Defendants shall not assert a defense
18 based upon Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).
19 The Settling Defendants shall provide a copy of this Consent
20 Decree to each contractor and each subcontractor hired to perform
21 Work that is required by this Consent Decree in an amount greater
22 than \$100,000.

23
24 IV. DEFINITIONS

25 31. Unless otherwise expressly provided herein, terms
26 used in this Consent Decree which are defined in CERCLA or in
27 regulations promulgated under CERCLA shall have the meaning

1 assigned to them in the statute or its implementing regulations.
2 Whenever terms are used in this Consent Decree and the Exhibits
3 attached hereto, the following definitions specified in this
4 paragraph shall apply.

5 (A) "Consent Decree" means this Decree and all
6 Appendices and Exhibits attached hereto.

7 (B) "Consulted Agencies" means the governmental
8 entities which have committed to participating in the
9 Monitoring Plan and its contingency planning process.
10 These entities are: the Washington Department of
11 Ecology ("Ecology"), Washington State Department of
12 Fisheries ("WDF"), Washington State Department of
13 Natural Resources ("DNR") (in its capacity as a
14 natural resource trustee), Washington State Department
15 of Wildlife, National Oceanic and Atmospheric
16 Administration ("NOAA") of the U.S. Department of
17 Commerce, United States Department of the Interior
18 including the U.S. Fish and Wildlife Service and
19 Bureau of Indian Affairs, Puyallup Tribe of Indians
20 ("Puyallup Tribe"), and the Muckleshoot Tribe of
21 Indians.

22 (C) "Contractor" or "Subcontractor" means the company
23 or companies retained by or on behalf of the Settling
24 Defendants to undertake and accomplish the Work and
25 associated activities required by this Consent Decree
26 and attached ROD and Monitoring Plan.

1 (D) "Effective Date" means the date the Consent
2 Decree is entered by the Court.

3 (E) "EPA" means the United States Environmental
4 Protection Agency.

5 (F) "Future Response Costs" shall mean all direct and
6 indirect investigation, enforcement, and response
7 costs (including applicable interest), except
8 oversight response costs, incurred by the United
9 States with respect to the St. Paul Waterway Problem
10 Area after the date of entry of this Consent Decree.

11 (G) "Institutional Controls" refer to the land use
12 restrictions and other regulations, ordinances,
13 covenants, and controls developed pursuant to the
14 Consent Decree to maintain the integrity and prevent
15 the unauthorized disturbance of the sediment cap,
16 monitoring stations, or other structures that will be
17 constructed, or other remedial measures that will be
18 implemented, at the St. Paul Waterway Problem Area.

19 (H) "Monitoring Plan" means the "Monitoring,
20 Reporting and Contingency Plan" attached as Exhibit A
21 to this Consent Decree which describes the monitoring
22 requirements, sampling, analyses, quality
23 assurance/quality control procedures, reporting
24 requirements and contingency plans and other actions
25 necessary for the proper operation and maintenance of
26 the sediment remedial action in the St. Paul Waterway
27 Problem Area.

1 (I) "National Contingency Plan ('NCP')" shall be used
2 as that term is used in 42 U.S.C. § 9605 and 40 C.F.R.
3 Part 300, as amended, 55 Fed. Reg. 8666 (March 8,
4 1990).

5 (J) "Natural Resource Trustees" shall mean those
6 entities identified as such pursuant to Section 107(f)
7 of CERCLA and Subpart G of the National Contingency
8 Plan, 40 C.F.R. §§ 300.600 through 300.615, and
9 include the National Oceanic and Atmospheric
10 Administration of the U.S. Department of Commerce, and
11 the U.S. Department of the Interior (hereinafter the
12 "federal Natural Resource Trustees"), and the
13 Washington Department of Ecology (on behalf of the
14 Washington Department of Fisheries, the Washington
15 Department of Natural Resources, and the Washington
16 Department of Wildlife), the Puyallup Tribe of
17 Indians, and the Muckleshoot Indian Tribe (hereinafter
18 the "other Natural Resource Trustees").

19 (K) "Oversight Response Costs" shall mean all costs,
20 including indirect costs, incurred by the United
21 States in overseeing the remedial action and
22 Monitoring Plan, including but not limited to, the
23 costs of reviewing and developing plans, reports and
24 other items pursuant to this Consent Decree and
25 verifying the remedial action and Work. Oversight
26 Response Costs shall also mean costs incurred by the
27 United States under its cooperative agreement with

1 Ecology, in an amount not to exceed \$10,000, and under
2 its cooperative agreement with the Puyallup Tribe for
3 the following tribal activities: (1) conduct of an
4 annual cap inspection, (2) review of draft and final
5 reports required under the Monitoring Plan, and (3)
6 participation in the Contingency Planning Process.

7 (L) "Past Response Costs" shall mean all costs,
8 including accrued interest and indirect costs incurred
9 by the United States and through EPA's cooperative
10 agreements with Ecology and the Puyallup Tribe, with
11 respect to the St. Paul Waterway Problem Area through
12 the date of entry of this Consent Decree. EPA's Past
13 Response Costs through the date of the ROD (September
14 30, 1989) are specified in the Cost Allocation Summary
15 (Exhibit E).

16 (M) "Project Coordinator" means the person designated
17 by the Settling Defendants with responsibility for
18 supervising or overseeing the Work to be performed
19 under this Consent Decree and Monitoring Plan.

20 (N) "Record of Decision ('ROD')" shall mean the EPA
21 Record of Decision set forth as Exhibit B to this
22 Consent Decree relating to the Commencement Bay
23 Nearshore/Tideflats Superfund Site, including the St.
24 Paul Waterway Problem Area, signed on September 30,
25 1989, by the Regional Administrator, EPA Region 10,
26 and all attachments thereto.

1 (O) "Sediment Remedial Action" means the sediment
2 remedial action for the St. Paul Waterway Problem Area
3 described in section 10.2.4 of the ROD and in the
4 Superfund Completion Report (Exhibit D).

5 (P) "Settling Defendants" means the Defendants
6 Simpson Tacoma Kraft Company, Champion International
7 Corporation, and the State of Washington, by and
8 through the State of Washington Department of Natural
9 Resources.

10 (Q) "Settling Parties" means the Settling Defendants,
11 the United States on behalf of EPA and the federal
12 Natural Resource Trustees, and the other Natural
13 Resource Trustees.

14 (R) "St. Paul Waterway Problem Area" refers to the
15 17-acre area, inclusive of the contaminated sediments
16 contained therein, located adjacent to the Simpson
17 Tacoma Kraft Mill in the St. Paul Waterway as
18 described in the ROD and the Superfund Completion
19 Report.

20 (S) "Site" means the entire Commencement Bay
21 Nearshore/Tideflats Superfund Site and project area,
22 located in Tacoma, Washington, as defined in the ROD,
23 including the St. Paul Waterway Problem Area.

24 (T) "Work" means all activities the Settling
25 Defendants are required to perform under this Consent
26 Decree to implement the ROD for the St. Paul Waterway
27 Problem Area of the Site, including the sediment

1 remedial action tasks described in this Consent Decree
2 and the attached Monitoring Plan and schedules.

3
4 V. GENERAL PROVISIONS

5 32. The objectives of the Settling Parties in
6 entering into this Consent Decree are (i) to protect the public
7 health and welfare and the environment from releases or
8 threatened releases of hazardous substances, pollutants, or
9 contaminants from the St. Paul Waterway Problem Area of the Site
10 by the implementation of the sediment remedial action and
11 monitoring, reporting and contingency activities by the Settling
12 Defendants, (ii) to restore habitat and natural resources with
13 respect to past activities in the St. Paul Waterway Problem Area,
14 (iii) to reimburse governmental entities for all Past, Future,
15 and Oversight Response costs, and (iv) to encourage public and
16 private cooperation to accomplish effective cleanup actions and
17 to restore the environmental health of Commencement Bay.

18 33. Settling Defendants shall finance and perform the
19 Work in accordance with this Consent Decree and Monitoring Plan
20 (Exhibit A), CERCLA and the NCP, and any amendments to CERCLA and
21 the NCP which occur during the implementation of the Work, other
22 applicable laws (see paragraphs 43, 117, and 118) and in a manner
23 consistent with the ROD. EPA has determined that the activities
24 contemplated by this Consent Decree are consistent with the NCP.

25 34. The obligations of Settling Defendants to finance
26 and perform the Work and to reimburse the United States for its
27 Past Response Costs, Oversight Response Costs and Future Response
28 ST. PAUL WATERWAY CONSENT DECREE - Page 23

1 Costs under this Consent Decree are joint and several. In the
2 event of the insolvency or other failure of any one or more
3 Settling Defendants to implement the requirements of this Consent
4 Decree, the remaining Settling Defendants shall complete all such
5 requirements.

6 35. Except as provided in Section 121(e) of CERCLA
7 and the NCP, no permit shall be required for any portion of the
8 Work under this Consent Decree conducted entirely within the
9 Site. This Consent Decree is not, and shall not be construed to
10 be, a permit issued pursuant to any federal or state statute or
11 regulation. Settling Defendants shall obtain all permits or
12 approvals necessary for Work under this Consent Decree outside of
13 the Site, or for any purposes other than implementation of this
14 Consent Decree, under federal, state, or local laws and shall
15 submit timely applications and requests for any such permits and
16 approvals. All existing permits for the Work performed to date
17 are hereby superseded by this Consent Decree, and Settling
18 Defendants are not required to take any further actions under
19 those permits.

20 36. The Settling Parties agree that if Settling
21 Defendants or their Contractors arrange for the off-site storage,
22 treatment, disposal, or transportation of any hazardous substance
23 from the St. Paul Waterway Problem Area, then Settling Defendants
24 will, as required, obtain EPA prior written approval of the use
25 of any such off-Site facility in accordance with 42 U.S.C.

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28 ST. PAUL WATERWAY CONSENT DECREE - Page 24

1 § 9621(e), and will comply with the applicable provisions of 40
2 C.F.R. Parts 261, 262, 263, 264, 265, and any relevant EPA
3 policies or guidances.

4 37. The standards and provisions of Section XIV
5 describing Force Majeure shall govern delays in obtaining any
6 necessary approvals or permits required for the Work and also the
7 denial of any such approvals or permits. However, the Settling
8 Defendants are required to make timely application for necessary
9 permit approvals and must provide any additional information
10 needed by the regulatory or consulting agency in a timely manner.

11 38. Settling Defendants shall include in all
12 contracts or subcontracts entered into for Work required under
13 this Consent Decree, provisions stating that such contractors or
14 subcontractors, including their agents and employees, shall
15 perform all activities required by such contracts or subcontracts
16 in compliance with all applicable laws and regulations.

17 39. All exhibits, appendices, and attachments to this
18 Consent Decree and any and all reports, plans, specifications,
19 schedules, and other documents required by the terms of this
20 Consent Decree and approved by EPA in accordance with the
21 provisions of this Consent Decree are incorporated into this
22 Consent Decree and enforceable under it.

23
24 VI. TRANSFERS OF INTEREST OR PROPERTY

25 40. The obligations of each Settling Defendant who
26 owns any interest in the Mill or property included in the St.
27 Paul Waterway Problem Area, with respect to undertaking and
28 ST. PAUL WATERWAY CONSENT DECREE - Page 25

1 maintaining the Work set forth in this Consent Decree and the
2 attached Monitoring Plan, or developed thereunder, shall run with
3 the land and shall be binding upon any and all persons who
4 acquire any interest in the Mill or any property included in the
5 St. Paul Waterway Problem Area. Within thirty (30) calendar days
6 of the effective date of this Consent Decree, the Settling
7 Defendants shall record a copy of this Decree with the Recorder's
8 Office, Pierce County, Washington. A copy of the recorded notice
9 shall be sent to EPA.

10 41. The Mill or any property within St. Paul Waterway
11 Problem Area may be freely alienated provided that at least sixty
12 (60) calendar days prior to the date of such alienation, the
13 Settling Defendants notify EPA in writing of such proposed
14 alienation, the name of the grantee, and a description of the
15 Settling Defendants' obligations, if any, to be performed by such
16 grantee. In the event of such alienation, all of Settling
17 Defendants' obligations pursuant to this Decree shall continue to
18 be met by the Settling Defendants or, subject to EPA approval, by
19 Settling Defendants and the grantee.

20 42. Prior to termination of this Consent Decree under
21 paragraph 125, any deed, title, or other instrument of conveyance
22 regarding the Mill or St. Paul Waterway Problem Area shall
23 contain a notice that such property is the subject of this
24 Consent Decree, setting forth the style of the case, case number,
25 and Court having jurisdiction herein.

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28 ST. PAUL WATERWAY CONSENT DECREE - Page 26

1 VII. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

2 43. The Work to be performed is specified in the
3 attached Monitoring Plan (Exhibit A). The provisions of this
4 Monitoring Plan shall take effect on the effective date of this
5 Consent Decree. The Monitoring Plan is incorporated by reference
6 into this Consent Decree and its terms, conditions, and
7 requirements are enforceable under the provisions of this Decree.
8 All Work shall be conducted in accordance with CERCLA, the NCP,
9 and the requirements of this Consent Decree. Any modifications
10 to the Work performed shall be approved by EPA under paragraph
11 46, 68, or 120.

12 44. The following Work shall be performed, as
13 specified in the Monitoring Plan:

14 (A) Conduct monitoring and report results in
15 accordance with the schedules, methods, sampling and
16 analysis protocols in the Monitoring Plan.

17 (B) Review and revise annual monitoring programs
18 under EPA direction and approval.

19 (C) Implement contingency planning, contingency
20 response, and expedited review procedures, if
21 necessary.

22 45. Simpson shall perform or arrange for the
23 performance of the monitoring unless the Settling Defendants
24 inform EPA otherwise. Work under this Consent Decree shall be
25 under the direction and supervision, as applicable, of a
26 qualified professional engineer, biologist, environmental
27 professional, certified hydrogeologist, or equivalent, with

1 | experience and expertise in contaminated site monitoring. Where
2 | appropriate, Simpson's project coordinator may direct and
3 | supervise the Work. EPA shall have the right to approve such
4 | supervisor, which consent shall not be unreasonably withheld.
5 | Simpson shall also inform EPA of the principal contractors and
6 | subcontractors to be used in advance of their involvement at the
7 | site where possible. In the event of EPA disapproval, Simpson
8 | shall promptly, but not later than 30 days, resubmit to EPA the
9 | names of its new selections.

10 | 46. Performance standards. (i) Purpose of
11 | performance standards. The performance standards are designed to
12 | evaluate the protectiveness of the remedy at the St. Paul
13 | Waterway Problem Area. These standards, as described in
14 | subparagraph (ii) below, shall be met at the St. Paul Waterway
15 | Problem Area. These performance standards are based on sediment
16 | quality objectives in the ROD, specific human health risk
17 | assessments, environmental effects tests, and associated
18 | interpretive guidelines. The Settling Defendants shall conduct
19 | sampling and monitoring activities in accordance with the
20 | attached Monitoring Plan in order to determine whether these
21 | performance standards are being attained. In accordance with the
22 | Contingency Planning Procedures of the Monitoring Plan, EPA may
23 | direct the Settling Defendants to conduct additional sampling and
24 | analysis if necessary to determine whether the performance
25 | standards are being attained.

26 | (ii) Definition of performance standards. There are
27 | three types of performance standards: physical, biological and

1 chemical. The chemical performance standards are interim
2 standards that apply as described in subparagraph (C) and until
3 reference stations for biological tests are established and
4 approved by EPA in accordance with the Monitoring Plan. At that
5 time, the biological performance standards will become effective
6 under this Decree. All data will be used throughout the duration
7 of monitoring activities under this Consent Decree for evaluating
8 the early warning triggers specified in the Monitoring Plan.

9 (A) Physical performance standard. A minimum of
10 three feet of sediment meeting the performance
11 standards in this paragraph shall be maintained at all
12 times throughout Areas A and B of the Problem Area
13 (see Figure 1d of Monitoring Plan, Exhibit A).

14 (B) Biological performance standard. (1)
15 This standard is measured by three
16 biological tests: benthic infauna
17 abundance, amphipod mortality bioassay, and
18 larval abnormality bioassay. These tests
19 were used to establish the sediment quality
20 objectives specified in the ROD. A
21 determination by EPA of an adverse effect
22 for the benthic infauna test, the amphipod
23 mortality bioassay, and either the bivalve
24 larvae abnormality test or echinoderm
25 larvae bioassay test shall be considered a
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27

1 failure to attain the biological performance
2 standard.

3 (2) The Monitoring Plan contains requirements for
4 annual monitoring of benthic and epibenthic abundance
5 and monitoring of seeps, vents, and sediments in the
6 Problem Area; there are no routine requirements for
7 conducting bioassay tests. Should EPA determine that
8 the data resulting from the Monitoring Plan indicate
9 the need for further evaluation or sampling to
10 determine whether the performance standards are being
11 attained, EPA may require the Settling Defendants to
12 conduct additional biological tests or take other
13 actions in accordance with the Contingency Planning
14 Process of the Monitoring Plan.

15 (3) EPA shall determine adverse effects for each of
16 the three biological performance standard tests as
17 described below:

18 (a) Benthic infauna abundance (in-situ). The
19 test sediment sample has a lower (statistically
20 significant using a one-tailed t-test with a
21 comparison error rate of $P \leq 0.05$) mean abundance
22 than the reference sediment sample of any of the
23 following major taxa: crustacea, mollusca, and
24 polychaeta; and the test sediment sample mean
25 abundance is less than 50 percent of the
26 reference sample mean total abundance.

1 (b) Amphipod mortality bioassay. The test
2 sediment sample has a higher (statistically
3 significant using a one-tailed t-test with a
4 comparison error rate of $P \leq 0.05$) mean mortality
5 than the reference sample, and the test sediment
6 sample mean mortality exceeds 25 percent
7 (absolute).

8 (c) Larval abnormality bioassay (oyster or
9 echinoderm). The test sediment sample has a
10 higher (statistically significant using a one-
11 tailed t-test with a comparison error rate of $P \leq$
12 0.05) mean abnormality than the reference
13 sediment sample, and the test sediment sample
14 mean abnormality exceeds 20 percent (absolute).

15 (4) The selection of reference areas for the purpose
16 of taking reference sediment samples for the
17 biological tests will be determined in accordance with
18 the Monitoring Plan. Samples for benthic infauna
19 analyses shall be taken in accordance with the
20 sampling and analytical methods, including replicate
21 samples, specified in the Monitoring Plan. Sediment
22 samples for bioassay analyses shall be collected from
23 the top two centimeters of the cap and analyzed in
24 accordance with applicable Puget Sound Estuary Program
25 protocols. The control and reference area criteria
26 established for the bioassays by the Puget Sound
27 Estuary Program protocols shall be used.

1 (C) Chemical performance standards. These standards
2 are interim performance standards as described above
3 and are specified as the lowest AET in Table 7 of the
4 Monitoring Plan. These standards are based upon the
5 interpretation of the biological tests described in
6 subparagraph (B) above using the Apparent Effects
7 Threshold (AET) method and on human health risk
8 assessment procedures. These chemical performance
9 standards are attained when the concentration of a
10 chemical in a sediment sample taken from the top two
11 centimeters of the cap is less than the lowest AET
12 value for that chemical in Table 7. However, if the
13 lowest AET value in Table 7 is exceeded, EPA may
14 determine, under the Contingency Planning Process,
15 that the chemical performance standard is being
16 attained if a combination of chemical and biological
17 data demonstrate no adverse biological effects.

18 (iii) Modifications to AET database or sampling and
19 test evaluation protocols. EPA may propose modifications to the
20 AET database or sampling and test evaluation protocols, including
21 QA/QC protocols, for the biological and chemical performance
22 standards after the date of this Consent Decree. EPA will first
23 consult with Settling Defendants and consulting agencies on
24 proposed modifications. If EPA and the Settling Defendants
25 agree on a modified AET database or sampling and test evaluation
26 protocols, the modified database or protocols will be used in
27 determining attainment of performance standards. If agreement is

1 not reached, the matter will be resolved in accordance with the
2 dispute resolution procedures described in Section XV of this
3 Consent Decree. Any modifications of the AET database or
4 sampling and test evaluation protocols will be documented and
5 filed with the court in accordance with paragraph 120 of this
6 Consent Decree.

7 47. Failure to attain performance standards. If one
8 or more of the performance standards is not attained, or if the
9 remedy is otherwise not protective of human health and the
10 environment, EPA shall determine -- where appropriate under the
11 Contingency Planning Procedures of the Monitoring Plan or under
12 Section IX, XIX, or XXIV below -- the additional response
13 activities to be conducted. If the problem has not been
14 corrected after proceeding under the Contingency Planning
15 Process, EPA shall determine whether the Settling Defendants
16 have failed to comply with the requirements of this Consent
17 Decree. Such failure shall be considered a matter not covered
18 under Section XVIII below and subject to the provisions of
19 paragraph 101 below.

20 48. The Settling Defendants acknowledge and agree
21 that nothing in this Consent Decree, including the Monitoring
22 Plan, constitutes a warranty or representation of any kind by EPA
23 or the United States that compliance with this Consent Decree
24 will achieve the performance standards set forth in paragraph 46
25 above, and that such compliance shall not foreclose the United
26 States from seeking performance of all terms and conditions of
27 this Consent Decree.

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VIII. ADDITIONAL WORK

49. If the Settling Defendants determine that additional Work may be necessary to attain the performance standards of this Consent Decree, the Settling Defendants shall obtain EPA's approval to proceed prior to performing such Work.

50. As specified in the Contingency Planning Process in the Monitoring Plan, EPA shall consult and coordinate Work with the Consulted Agencies prior to performing additional Work, or requiring the Settling Defendants to perform additional Work, that is authorized by the Contingency Response Process. Further, EPA shall use best efforts consistent with this Consent Decree and the State Consent Decree dated December 24, 1987, as amended, to coordinate with Ecology in the event that any future enforcement actions are initiated by EPA under this Consent Decree or by Ecology.

IX. PERIODIC REVIEW TO ENSURE PROTECTION OF HUMAN HEALTH AND THE ENVIRONMENT

51. EPA will conduct reviews of the sediment remedial action in accordance with CERCLA § 121(c), 42 U.S.C. § 9621(c), and any applicable regulations or guidance, based on data received under the Monitoring Plan together with any other appropriate information. If EPA determines as a result of this review that further response action under CERCLA § 104 or § 106 may be necessary, EPA shall provide the Settling Defendants a reasonable opportunity to confer in accordance with the

1 contingency planning process prior to implementing a response
2 action. After such consultation, EPA shall, in writing, either
3 affirm, modify, or rescind the determination of the need for
4 further response action. If directed by EPA, the Settling
5 Defendants shall perform the response action unless they request
6 review of EPA's final decision pursuant to the dispute resolution
7 provisions in Section XV of this Decree, to the extent permitted
8 by CERCLA § 113, 42 U.S.C. § 9613.

9
10 X. QUALITY ASSURANCE

11 52. Settling Defendants shall use quality assurance,
12 quality control, and chain of custody procedures in accordance
13 with EPA's "Interim Guidelines and Specifications for Preparing
14 Quality Assurance Project Plans" (QAM-005/80), EPA's "Data
15 Quality Objective Guidance" (EPA/540/G87/003 and 004), Puget
16 Sound Estuary Protocols (1986-1990), and subsequent amendments to
17 such guidelines. All such procedures and provisions for
18 modifications are included in the Monitoring Plan and paragraph
19 46 of this Consent Decree. Should any need for modifications
20 arise, the modifications will be provided to the Settling
21 Defendants by EPA and incorporated into the Monitoring Plan
22 pursuant to paragraphs 46 and 120. Any disagreements with such
23 modifications shall be resolved under the dispute resolution
24 provisions in this Consent Decree. Sampling data generated
25 consistent with the Monitoring Plan shall be admissible as
26 evidence against Settling Defendants, and Settling Defendants

1 waive any objection to admissibility of such evidence in any
2 proceeding under this Consent Decree.

3 53. Selection of any laboratory to be utilized by
4 Settling Defendants in implementing this Consent Decree is
5 subject to approval by EPA. Settling Defendants shall ensure
6 that EPA and its authorized representatives have reasonable
7 access to each laboratory in order to inspect that laboratory,
8 pertinent laboratory records, and equipment utilized in
9 implementing this Consent Decree. Settling Defendants shall also
10 require each laboratory selected to submit a quality assurance
11 plan to EPA. In addition, Settling Defendants shall require each
12 laboratory to perform analyses of samples provided by EPA
13 according to EPA specified methods, to demonstrate the quality of
14 each laboratory's analytical data.

15
16 XI. SITE ACCESS AND SAMPLING

17 54. (i) As of the effective date of this Consent
18 Decree, EPA and its authorized representatives, including Ecology
19 and the Puyallup Tribe, and their contractors, shall have access
20 to the St. Paul Waterway Problem Area and any property to which
21 access is required for the oversight or implementation of this
22 Consent Decree, to the extent access to the property is
23 controlled by or available to Settling Defendants. EPA, Ecology,
24 the Puyallup Tribe and their authorized representatives shall
25 have the authority to enter and freely move about such property
26 at all reasonable times for the purposes of overseeing the

1 requirements of this Consent Decree, including, but not limited
2 to:

3 (A) Conducting any activity authorized by or related
4 to CERCLA, the Resource Conservation and Recovery Act
5 ("RCRA"), 42 U.S.C. §§ 6901 et seq., the NCP or this
6 Consent Decree;

7 (B) Monitoring the Work, progress of such Work, or
8 any other activities undertaken on the property;

9 (C) Verifying any data or information submitted to
10 EPA;

11 (D) Inspecting and copying records, operation logs,
12 contracts, or other documents maintained or generated
13 by Settling Defendants or their agents or contractors
14 for the Work undertaken pursuant to this Consent
15 Decree;

16 (E) Conducting such tests, investigations, or sample
17 collections as deemed necessary to monitor compliance
18 with this Consent Decree;

19 (F) Using a camera, sound recording, or other
20 documentary type equipment to record Work done
21 pursuant to this Consent Decree;

22 (G) Assessing the need for, planning, or implementing
23 additional response actions at or near the St. Paul
24 Waterway Problem Area; and

25 (H) Assessing Settling Defendants' compliance with
26 the terms of this Consent Decree.

1 (ii) Settling Defendants shall have the right to
2 accompany EPA, Ecology, the Puyallup Tribe, or their authorized
3 representative on the property. Parties with access to the
4 property shall comply with applicable health and safety
5 requirements and shall not interfere, to the extent practicable,
6 with ongoing operations.

7 55. To the extent that the St. Paul Waterway or any
8 other area where Work is to be performed under this Consent
9 Decree is owned or controlled by persons other than Settling
10 Defendants, Settling Defendants shall use best efforts to secure
11 from such persons access for Settling Defendants, as well as for
12 EPA and its representatives, including Ecology and the Puyallup
13 Tribe and their contractors, as necessary to implement this
14 Consent Decree. For purposes of this paragraph "best efforts"
15 includes, but is not limited to, seeking judicial assistance. If
16 any access required to complete the Work is not obtained within
17 thirty (30) days of the effective date of this Consent Decree, or
18 within 30 days of the date EPA notifies Settling Defendants in
19 writing that additional access beyond that previously secured is
20 necessary, Settling Defendants shall promptly notify EPA. EPA
21 may thereafter assist Settling Defendants in obtaining access.
22 Settling Defendants shall reimburse the United States, in
23 accordance with the procedures in Section XVII, for Future
24 Response Costs incurred in implementing this paragraph.

25 56. Notwithstanding any provision of this Consent
26 Decree, EPA, Ecology and the Puyallup Tribe retain all of their
27 access authorities and rights under CERCLA, RCRA and any other
28 ST. PAUL WATERWAY CONSENT DECREE - Page 38

1 applicable federal or state statute, regulation or other
2 authority.

3
4 XII. REPORTING, DOCUMENT RETENTION AND AVAILABILITY

5 57. Settling Defendants shall report to EPA or its
6 authorized representatives the results of all sampling and/or
7 tests, quality assurance data, and other data generated by
8 Settling Defendants as specified by the Monitoring Plan. All
9 reports submitted to EPA under the Monitoring Plan shall be
10 signed by the Project Coordinator or designee and shall be filed
11 with the Court after approval by EPA.

12 58. All required work plans, reports, and other
13 documents ("documents") shall be subject to review and approval
14 by EPA.

15 59. Except as provided in the Monitoring Plan:

16 (A) EPA shall notify the Settling Defendants in
17 writing of approval or disapproval of the document, or
18 any part thereof, within thirty (30) calendar days of
19 receipt of any document required by this Consent
20 Decree. In the event EPA needs a longer review
21 period, EPA shall notify Settling Defendants of its
22 revised response date within thirty (30) calendar days
23 of receipt of the document.

24 (B) In the event of disapproval, EPA shall specify in
25 writing any deficiencies and modifications to the
26 document. Nothing in this provision shall negate
27 EPA's right to approve or disapprove a submittal by

1 the Settling Defendants should the time periods stated
2 in this paragraph be exceeded by EPA, nor shall such
3 delay by EPA subject Settling Defendants to any
4 enforcement action.

5 (C) Within thirty (30) calendar days of receipt of
6 any document disapproval or comments for revision, the
7 Settling Defendants shall either: (1) submit a revised
8 document to EPA which incorporates EPA's modifications
9 or summarizes and addresses EPA's concerns or (2)
10 provide a notice of dispute under Section XV of this
11 Consent Decree.

12 60. If the date for submission of any item or
13 notification required by this Consent Decree falls upon a weekend
14 or state or federal holiday, the time period for submission of
15 that item or notification is extended to the next working day
16 following the weekend or holiday.

17 61. Upon the occurrence of any event during
18 performance of the Work under this Consent Decree which, pursuant
19 to Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R.
20 § 300.63, and pursuant to Section 304 of the Emergency Planning
21 and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004,
22 requires reporting, the Settling Defendants shall within
23 twenty-four (24) hours orally notify the EPA Project
24 Coordinator/OSC, and the EPA Superfund Response and Investigation
25 Section, Region 10, in addition to the reporting required by
26 Section 103 of CERCLA and Section 304 of EPCRA. Within twenty
27 (20) calendar days of the onset of such an event, the Settling

1 Defendants shall furnish to EPA a written report setting forth
2 the events which occurred and the measures taken, and to be
3 taken, in response thereto. Within thirty (30) calendar days of
4 the conclusion of such an event, the Settling Defendants shall
5 submit a report setting forth all final actions taken to respond
6 thereto. Reports submitted in compliance with other laws that
7 include information required by this Consent Decree may be
8 submitted under this Consent Decree and may be appended to a
9 regular monitoring report rather than being submitted to the
10 court separately.

11 62. The Settling Defendants shall make available to
12 EPA, and shall retain, during the pendency of this Consent Decree
13 and for a period of ten (10) years after its termination, all
14 records, data, and documents in their possession, custody or
15 control which relate to the performance of this Consent Decree,
16 and State Consent Decree, including documents reflecting the
17 results of any sampling and all documents pertaining to their own
18 or any other person's response actions or costs under CERCLA.
19 The Settling Defendants shall require all such records in the
20 possession of their contractors or agents to be provided to them
21 and shall retain originals or true copies of all such records.
22 After the ten (10) year period of document retention, the
23 Settling Defendants shall notify EPA at least ninety (90)
24 calendar days prior to the destruction of any such documents and
25 the Settling Defendants shall relinquish custody of the documents
26 to EPA on request.

1 63. Except as provided by paragraph 65 below, the
2 Settling Defendants may assert business confidentiality claims
3 covering part or all of the information provided in connection
4 with this Consent Decree to the extent permitted by and in
5 accordance with Section 104(e)(7)(A) of CERCLA, 42 U.S.C.
6 § 9604(e)(7)(A), and pursuant to EPA's Confidential Business
7 Information regulations contained at 40 C.F.R. §§ 2.203 - 2.206.

8 64. Documents or information determined to be
9 confidential by EPA will be afforded the protection specified in
10 40 C.F.R. Part 2, Subpart B. If no such written claim
11 accompanies the information when it is submitted to the EPA, or
12 if EPA has notified Settling Defendants that the documents or
13 information are not confidential under the standards of Section
14 104(e)(7) of CERCLA, the public may be given access to such
15 information without further notice to the Settling Defendants
16 unless such information is subject to the requirements of
17 paragraph 65.

18 65. Information acquired or generated by the Settling
19 Defendants in performance of the Monitoring Plan and Work under
20 this Consent Decree that is subject to the provisions of Section
21 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall not be
22 claimed as confidential by the Settling Defendants. EPA may make
23 Settling Defendants' preliminary or draft data or documents
24 available to its contractors involved in reviewing such
25 information in accordance with contractual requirements on
26 confidentiality. Except as specifically provided in the
27 Monitoring Plan, EPA shall not make Settling Defendants'

1 documents that are marked as preliminary or draft data or
2 documents available to Consulted Agencies or any other person
3 without prior consultation with the Project Coordinator. Except
4 as provided in the Monitoring Plan, the Consulted Agencies also
5 shall not make Settling Defendants' preliminary or draft data or
6 documents available to any other person without prior
7 consultation with EPA's RPM and the Project Coordinator. If
8 Settling Defendants request, EPA or the Consulted Agency shall
9 include an explanation regarding the reliability or status of any
10 preliminary or draft data or documents being made available.

11

12 XIII. DESIGNATION OF REMEDIAL PROJECT MANAGER/ON-SCENE
13 COORDINATOR AND PROJECT COORDINATOR

14 66. Within twenty (20) calendar days of the effective
15 date of this Consent Decree, the Settling Defendants shall notify
16 EPA, in writing, of the name, address, and telephone number of
17 their designated Project Coordinator and Alternate Project
18 Coordinator responsible for supervising or overseeing the Work to
19 be performed under this Consent Decree and Monitoring Plan. The
20 Project Coordinator shall have primary responsibility for
21 implementation of the Work at the St. Paul Waterway Problem Area
22 under this Consent Decree and Monitoring Plan as provided in
23 Section VII above. Champion and DNR shall provide the name,
24 telephone number, and address of a project contact for EPA. The
25 Settling Defendants may change their Project Coordinator(s) or
26 Contacts by notifying EPA, in writing, at least ten (10) calendar
27 days prior to the change.

1 under this Consent Decree notwithstanding Settling Defendants'
2 best efforts to avoid the delay, including but not limited to
3 using best efforts to address any potential Force Majeure (i) as
4 it is occurring and (ii) following the potential Force Majeure
5 event, such that the delay is minimized to the greatest extent
6 possible. Force Majeure shall not include increased costs or
7 expenses in connection with the performance of the Work under the
8 Consent Decree or Monitoring Plan, changed financial
9 circumstances of Settling Defendants or nonattainment of the
10 performance standards set forth in Section VII of this Consent
11 Decree.

12 70. When circumstances or any event occurs or has
13 occurred which may delay the completion of any phase of the Work
14 or delay access to the St. Paul Waterway Problem Area or to any
15 property on which any part of the Work is to be performed,
16 whether or not caused by a Force Majeure event, the Settling
17 Defendants shall promptly (but no later than 48 hours) orally
18 notify EPA's RPM, or other EPA representative in his/her absence.
19 Within five (5) working days of the event which Settling
20 Defendants contend is responsible for the delay, Settling
21 Defendants shall notify EPA in writing of reason(s) for the
22 delay, the anticipated duration of such delay, the measures taken
23 and to be taken by Settling Defendants to prevent or minimize the
24 delay, the timetable for implementation of such measures, and a
25 statement as to whether, in the opinion of the Settling
26 Defendants, such event may cause or contribute to an endangerment
27 to public health, welfare or the environment. Failure to give

1 oral notice to EPA's Project Coordinator and to give written
2 explanation to EPA in a timely manner shall constitute a waiver
3 of any claim of Force Majeure.

4 71. If EPA agrees that the delay or anticipated delay
5 is or was attributable to a Force Majeure event, the time for
6 performance of the obligations under this Consent Decree that are
7 directly affected by the Force Majeure event shall be extended by
8 agreement of the Settling Parties for a period of time to allow
9 the completion of the specific phase of Work and/or any
10 succeeding phase of the Work affected by such delay.

11 72. If EPA does not agree that the delay or
12 anticipated delay has been or will be a Force Majeure event, or
13 that the duration of the delay is or was warranted under the
14 circumstances, the Settling Parties shall resolve the dispute
15 according to Section XV hereafter. In any such proceeding,
16 Settling Defendant has the burden of demonstrating by a
17 preponderance of evidence that the delay or anticipated delay has
18 been or will be caused by a Force Majeure as a defense to
19 compliance with this Consent Decree.

20
21 XV. DISPUTE RESOLUTION

22 73. If the parties cannot resolve a disagreement
23 under this Consent Decree, EPA shall use the procedures set forth
24 in this Section and shall promptly make a determination or
25 certify issues to the court for resolution.

26 74. The Settling Parties shall attempt to resolve
27 expeditiously and informally any disagreements concerning

1 implementation of this Consent Decree or any Work required
2 thereunder. Informal negotiations between the parties to the
3 dispute may last for a period of up to fourteen (14) calendar
4 days from the date that written notice of the existence of the
5 dispute is served on all Settling Parties, unless it is extended
6 by written agreement between the Settling Parties.

7 75. In the event that any dispute arising under this
8 Consent Decree is not resolved informally within the fourteen
9 (14) day time period indicated in paragraph 74 above, the party
10 who gave the notice shall then within ten (10) days serve on the
11 Settling Parties a written statement of the issues in dispute,
12 the relevant facts upon which the dispute is based, and factual
13 data, analysis or opinion supporting its position, and all
14 supporting documentation on which such party relies (hereinafter
15 the "Statement of Position"). Opposing parties shall serve their
16 Statements of Position, including supporting documentation, no
17 later than ten (10) calendar days after receipt of the
18 complaining party's Statement of Position. In the event that
19 these ten-day time periods for exchange of Statements of Position
20 may cause a delay in the Work, they shall be shortened in
21 accordance with written notice by EPA.

22 76. An administrative record of any dispute under
23 this Section shall be maintained by EPA. At its option, EPA may
24 determine, which determination shall not be reviewable by a
25 court, that any dispute which relates to the selection, extent,
26 or adequacy of any aspect of any response actions is to be
27 resolved on an administrative record. For purposes of this

1 paragraph, the adequacy of any aspect of any response action
2 includes: (i) the adequacy or appropriateness of plans,
3 procedures to implement plans, or any other items requiring
4 approval by EPA under this Consent Decree; and (ii) the adequacy
5 of response actions performed pursuant to this Consent Decree.
6 The record shall include the written notification of such dispute
7 and the Statements of Positions and any other materials submitted
8 by the parties in support of their positions. The record shall
9 be available for review by all Settling Parties to this Consent
10 Decree.

11 77. Upon review of the administrative record, EPA
12 shall issue a final decision and order resolving the dispute
13 within fourteen (14) calendar days.

14 78. Any decision and order of EPA pursuant to the
15 preceding paragraph shall be binding unless a Notice of Judicial
16 Appeal is filed with this Court within ten (10) calendar days of
17 receipt of EPA' decision and order. In any event, judicial
18 review will be conducted on the administrative record, using an
19 arbitrary and capricious standard of review. The Settling
20 Defendants shall bear the burden of proof for demonstrating that
21 the decision is arbitrary and capricious. The filing of a
22 judicial appeal shall not stay the accrual of stipulated
23 penalties pursuant to Section XVI. After the date of termination
24 of this Consent Decree specified in Section XXXII hereof,
25 judicial review will be available only by instituting new
26 action(s) to the extent permitted by law, except for those
27 continuing obligations set forth in paragraph 125.

1 79. The invocation of the procedures stated in this
2 Section shall not extend or postpone the Settling Defendants'
3 obligations under this Consent Decree with respect to the
4 disputed issue unless and until EPA finds, or the Court orders,
5 otherwise.

6 80. In no event will the standards for performance of
7 the Work set forth in paragraph 46 of this Consent Decree be
8 subject to challenge by the Settling Defendants. Disputes on
9 whether the performance standards have been met or on
10 modifications to such performance standards proposed by EPA are
11 subject to dispute resolution under this Section.

12
13 XVI. STIPULATED PENALTIES

14 81. The Settling Defendants shall be jointly and
15 severally liable for stipulated penalties in the amounts set
16 forth in paragraph 87 for each violation of the requirements of
17 this Consent Decree unless EPA or a court determines that such
18 failure is excused under Section XIV ("Force Majeure").
19 Violations by the Settling Defendants shall include, but are not
20 limited to, failure to complete an activity under this Consent
21 Decree, or any matter under this Consent Decree in a manner
22 acceptable to EPA and within the specified reporting schedules,
23 established in and approved under this Consent Decree. Any
24 modifications of the time for performance shall be mutually
25 agreed to in writing pursuant to paragraph 68 or 120.

26 82. All penalties begin to accrue on the day that
27 complete performance is due or a violation occurs, and continue

1 to accrue through the final day of correction of the
2 noncompliance. Nothing herein shall prevent the simultaneous
3 accrual of separate penalties for separate violations of this
4 Consent Decree.

5 83. Following a determination by EPA that Settling
6 Defendants have failed to comply with any requirement of this
7 Consent Decree, EPA shall give Settling Defendants written
8 notification of the violation and describe the noncompliance.
9 EPA shall use best efforts to issue such notification within
10 thirty (30) days of its determination of a violation. This
11 notice shall also indicate the amount of penalties currently due,
12 and the rate of accrual for continuing violations.

13 84. All penalties owed under this Section shall be
14 payable within thirty (30) calendar days of receipt of the
15 notification of noncompliance, unless the Settling Defendants
16 invoke the dispute resolution procedures under Section XV.
17 Penalties shall accrue from the date of violation regardless of
18 whether EPA simultaneously notified the Settling Defendants of a
19 violation. Interest shall begin to accrue on the unpaid balance
20 at the end of the thirty day period pursuant to paragraph 89 of
21 this Section. Such penalties shall be paid by certified check to
22 the "Hazardous Substances Response Superfund," and shall contain
23 Settling Defendants' complete and correct address, the Site name,
24 and the civil action number. All checks to the "Hazardous
25 Substances Response Trust Fund" shall be mailed to U.S. EPA
26 Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251.