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§ 107(f)(2), 42 U.S.C. § 9607(f)(2); Subpart G of the NCP, 40 C.F.R. § 300.600; and Executive Order 12580, 52 Fed. Reg. 2933 (January 23, 1987), as amended by Executive Order 12777, 56 Fed. Reg. 54757 (October 19, 1991). MDNR and MDE are principal departments of Maryland State government that have been designated as Natural Resource Trustees pursuant to CERCLA § 107(f)(2), 42 U.S.C. § 9607(f)(2), Subpart G of the NCP, 40 C.F.R. § 300.605, and applicable State law. Applicable State law includes Section 1-101 of the Natural Resources Article and Sections 4-402, 4-405, and 7-206 of the Environment Article, Annotated Code of Maryland.

D. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. §9621(f)(1)(F), EPA notified the State of Maryland (the “State”) on July 20, 2012, of negotiations with potentially responsible parties (“PRPs”) regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified DOI, NOAA and the State of Maryland on September 20, 2012, of negotiations with the PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal and State trusteeship and encouraged the Trustees to participate in the negotiation of this Consent Decree. The Trustees have participated in the negotiation of the Consent Decree with respect to Natural Resource Damages and support this Consent Decree.

F. The United States acknowledges and accepts that the Settling Performing Defendants and Settling Non-Performing Defendants (as defined herein) have reached concurrent separate agreements under which the Settling Non-Performing Defendants resolve their alleged liability by contributing approximately \$18,800,000.00 to the Settling Performing Defendants for the Work, Natural Resources Damages, and Future Response Costs (as those terms are defined herein) required by this Consent Decree.

G. The Defendants that have entered into this Consent Decree (“Settling Defendants”), do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment, nor to any damage to Natural Resources. Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants, or any claim by the State, EPA, or the Natural Resource Trustees. Settling State Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants, or any claim by the State or the United States.

H. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, certain PRPs commenced in June of 2006, a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430. The RI/FS was conducted under the jurisdiction of EPA under an Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study, CERCLA Docket No. CERCL-03-2006-0051 RF, March 15, 2006. A Non-Time Critical Removal Action was conducted at the Site between June 26, 2008, and December 2, 2008, to remove surface materials and containers that had exhibited elevated chemical concentrations in order to immediately reduce the risk to trespassers and on-Site workers.

I. The PRPs completed a Remedial Investigation (“RI”) Report on May 14, 2012, and a Feasibility Study (“FS”) Report on March 18, 2013.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on June 6, 2013, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action and conducted a public meeting on the proposed plan on June 19, 2013. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Acting Director of the Hazardous Site Cleanup Division, EPA Region III, based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (“ROD”), executed on September 30, 2013, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

L. The federal and State Trustees for the Site analyzed EPA’s and other available data to assess potential injuries to natural resources and their services in order to quantify both injuries and natural resource damages. The Trustees then entered into negotiation with the Settling Performing Defendants and agreed, *inter alia*, to specific restoration projects, to be performed by the Settling Performing Defendants in conjunction with implementation of the remedy. The requirements of this work are set forth in the Restoration Statement of Work, attached at Appendix E.

M. Under the terms of this Consent Decree, and effective upon lodging, the Settling Performing Defendants have agreed to undertake full performance of the requirements outlined in the Restoration Statement of Work, as well as related documents created pursuant to the Restoration Statement of Work. The Restoration Statement of Work is incorporated at Appendix E, and its requirements for restoration work are made enforceable under this Consent Decree.

N. This Consent Decree fully and finally resolves any and all Natural Resource Damages recoverable by the United States and the State from Settling Defendants, Settling Federal Agencies, and Settling State Agencies, for injury to, destruction of, or loss of use or impairment of Natural Resources at the Site, except as otherwise set forth in this Consent Decree.

O. Based on the information presently available to EPA and the Trustees, EPA and the Trustees believe that the Work will be properly and promptly conducted by Settling Performing Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices, including but not limited to the Restoration Statement of Work (Appendix E).

P. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action set forth in the ROD and the Work to be performed by Settling Performing Defendants shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

Q. 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, achieve required restoration of injuries to natural resources, and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendants. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(b) and (c) because the Settling Defendants did business in and CERCLA releases occurred in this Judicial District. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States (including on behalf of Settling Federal Agencies) and the State of Maryland (including on behalf of Settling State Agencies) and upon Settling Defendants and their successors, and assigns. 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.

3. Settling Performing Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Settling Performing 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 Performing Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Performing Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of 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 Settling Performing Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, 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 terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply solely for purposes of this Consent Decree:

“68th Street Dump Site Special Account” shall mean the special account within the EPA Hazardous Substances Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“68th Street Site RD/RA Environmental Remediation Trust” or “Trust” shall mean the environmental remediation trust created or to be created pursuant to 26 C.F.R. 301.7701-4(e).

“Ancillary Agreements” shall mean the separate agreements negotiated concurrently with this Consent Decree between the Settling Performing Defendants and Settling Non-Performing Defendants under which the Settling Non-Performing Defendants resolve their alleged liability for the Site by contributing approximately \$18,800,000 to the Settling Performing Defendants for the Work, Natural Resources Damages, Future Response Costs and Future Oversight Costs (as

those terms are defined herein) required by this Consent Decree. Ancillary Agreements include both the cash-out and cash-out with reopener agreements as identified on Appendix C.

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

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

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

“Effective Date” shall be the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

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

“Federal Natural Resource Trustees” shall mean the federal agencies designated pursuant to CERCLA and the NCP as trustees for natural resources actually or potentially injured, destroyed or lost as a result of releases at or from the Site, specifically, the United States Department of the Interior (“DOI”) acting through its authorized official, the Regional Director, Fish and Wildlife Service (“USFWS”), Region 5, and the United States Department of Commerce (“DOC”) acting through the National Oceanic and Atmospheric Administration (“NOAA”).

“Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Performing Defendants’ performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports, and other deliverables submitted pursuant to this Consent Decree, MDE costs billed to EPA by agreement between MDE and EPA, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include: the costs incurred by the United States pursuant to Paragraph 9 (Notice to Successors-in-Title), Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 48 (Funding for Work Takeover), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XX (Dispute Resolution) and all litigation costs.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Consent Decree, in overseeing implementation of 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 Paragraph 9 (Notice to Successors-in-Title), 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, implement, monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation), XV

(Emergency Response), Paragraph 48 (Funding for Work Takeover), and Section XXX (Community Relations), and MDE costs billed to EPA by agreement between MDE and EPA.

“Institutional Controls” shall mean Proprietary Controls and state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water, and/or resource use to minimize the potential for human exposure to Waste Materials at the Site; (b) limit land, water, and/or resource use to implement, ensure non-interference with, or ensure the protectiveness of the Remedial Action; and/or (c) provide information intended to modify or guide human behavior at the Site.

“Institutional Control Implementation and Assurance Plan” shall mean the plan which establishes and documents the activities necessary to implement and ensure the long-term stewardship of Institutional Controls set forth in the ROD and specifies the person and/or organizations that will be responsible for conducting these activities.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“MDE” shall mean the Maryland Department of the Environment and its successor departments, agencies, or instrumentalities.

“MDNR” shall mean the Maryland Department of Natural Resources and its successor departments, agencies, or instrumentalities.

“MDTA” shall mean the Maryland Transportation Authority and its predecessor and successor departments, agencies, or instrumentalities. MDTA is an agency of the State of Maryland, charged with supervising, financing, constructing, operating, and maintaining transportation facilities projects under Md. Transportation Code Ann. § 4-204, which includes the operation, maintenance, and repair of portions of Highway Interstate 95 (“I-95”), an elevated roadway located within Site boundaries.

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

“Natural Resource” or “Natural Resources” shall have the same meaning provided in Sections 101(16) and 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9601, 9607(a)(4)(C), and applicable regulations at 43 C.F.R. Part 11, as well as applicable Maryland law, and shall include land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, pertaining to, or otherwise controlled by the United States or the State of Maryland.

“Natural Resource Damages” means any damages recoverable by the United States or the State of Maryland on behalf of the public for injury to, destruction of, or loss or impairment of Natural Resources at the Site as a result of a release of hazardous substances, including but not limited to: (i) the costs of assessing such injury, destruction, or loss or impairment arising from or relating to such a release; (ii) the costs of restoration, rehabilitation, or replacement of injured or lost Natural Resources or of acquisition of equivalent resources; (iii) the costs of planning such restoration activities; (iv) compensation for injury, destruction, loss, impairment, diminution in

value, or loss of use of Natural Resources; and (v) each of the categories of recoverable damages described in 43 C.F.R. § 11.15 and applicable state and tribal law.

“Operation and Maintenance” or “O&M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Settling Performing Defendants) and maintenance, monitoring, and enforcement of Institutional Controls.

“Owner Settling Defendants” shall mean the City of Baltimore, Maryland; CSX Realty Development, LLC; CSX Transportation, Inc.; Industrial Enterprises, Inc.; the State; Mullan Enterprises, Inc.; and Pulaski & 68th Street, LLC, as well as any Settling Defendants who become owners of property at the Site after the date of Lodging.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States, State of Maryland and Settling Defendants.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through the date of Lodging of this Consent Decree, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

“Past Trustee Assessment Costs” shall mean State Trustee costs incurred through October 31, 2015, and federal Trustee costs incurred through October 31, 2015.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD attached hereto as Appendix B and those developed by the Settling Performing Defendants and approved by EPA during Remedial Design.

“Plaintiffs” shall mean the United States and the State of Maryland.

“Proprietary Controls” shall mean easements or covenants running with the land that (a) limit land, water or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded in the appropriate land records office.

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site signed on September 30, 2013, by the Acting Director of the Hazardous Site Cleanup Division, EPA Region III, and all attachments thereto. The ROD is attached as Appendix B.

“Remedial Action” shall mean all activities Settling Performing Defendants are required to perform under the Consent Decree to implement the ROD, the final Remedial Design and Remedial Action Work Plans, and other plans approved by EPA, including implementation of Institutional Controls, until the Performance Standards are met, and excluding performance of the Remedial Design, O&M, and the activities required under Section XXVI (Retention of Records).

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 11.d. and approved by EPA, and any modifications thereto.

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

“Remedial Design Work Plan” shall mean the document developed pursuant to Paragraph 11.a-c. and approved by EPA, and any modifications thereto.

“Restoration Work” shall mean those restoration, construction, reporting and monitoring activities specified in the Restoration Statement of Work which is incorporated at Appendix E and made enforceable under this Consent Decree as well as those actions referenced in Section XVII (Payments to Trustees for Natural Resource Damages and Performance of Natural Resource Restoration Projects).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean those parties identified in Appendix C (Settling Non-Performing Defendants), and Appendix D (Settling Performing Defendants). For purposes of Paragraph 91, “Settling Defendants” shall also include the Settling Defendants’ successors in interest, shareholders, and parent corporations, to the extent that these entities’ liability is alleged to be derived from the respective Settling Defendant’s CERCLA liability for the Site.

“Settling Defendants’ Past Costs” shall mean all costs of “response,” as that term is defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), incurred by Settling Defendants prior to and including the date on which this Consent Decree is lodged with the Court, including those costs incurred during and in the preparation of the RI and FS.

“Settling Federal Agencies” (“SFAs”) shall mean the United States Army, the United States Coast Guard, the United States Department of Veterans Affairs, the United States Postal Service, the United States Department of Defense, and their successor departments, agencies, or instrumentalities.

“Settling Non-Performing Defendants” shall mean the parties identified in Appendix C.

“Settling Performing Defendants” shall mean the parties identified in Appendix D.

“Settling Performing Defendants’ Future Costs” shall mean all costs of “response” as that term is defined in Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), incurred by Settling Performing Defendants for Work at the Site pursuant to the requirements of this Consent Decree.

“Settling State Agencies” shall mean all agencies of the State of Maryland and their predecessor and successor departments, agencies, or instrumentalities. These agencies, whose potential liability at the Site is resolved hereunder, include but are not limited to the Maryland Department of Transportation (“MDOT”), MDTA, the State Highway Administration (“SHA”), the Maryland Department of Public Safety and Correctional Services (“DPSCS”), the Maryland Department of Juvenile Services (“DJS”), Maryland Department of Social Services (“DSS”) Towson University, and the University of Maryland, Baltimore. “Settling State Agencies” shall be included with the definition of Settling Defendants pursuant to this Consent Decree, except as provided otherwise by the use of the term “Settling State Agency(ies).”

“Site” shall mean the 68th Street Dump Site, which encompasses approximately 239 acres, located in the Rosedale Area of Baltimore County and City of Baltimore, Maryland, and depicted in the ROD, attached hereto as Appendix B, and the map attached hereto as Appendix A.

“State” shall mean the State of Maryland and each department, agency, and instrumentality of the State of Maryland, including the Settling State Agencies, MDNR, and MDE.

“Supervising Contractor” shall mean the principal contractor retained by Settling Performing Defendants to supervise and direct the implementation of the Work under this Consent Decree.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“Trustees” or “Natural Resource Trustees” shall mean the United States Department of the Interior (“DOI”), the United States Fish and Wildlife Service (“USFWS”), the U.S. Department of Commerce (“DOC”), the National Oceanographic and Atmospheric Administration (“NOAA”), the State of Maryland (“State”), the Maryland Department of Natural Resources (“MDNR”) and the Maryland Department of the Environment (“MDE”).

“Trustees’ Future Oversight Costs” shall mean the costs incurred by the Trustees in finalizing their assessment of natural resource damages after October 31, 2015, and in monitoring and supervising Settling Performing Defendants’ performance of the Restoration Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports, and other deliverables submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Restoration Work; however, Trustees’ Future Oversight Costs do not include: the costs incurred by the United States pursuant to Paragraph 9 (Notice to Successors-in-Title), Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 48 (Funding for Work Takeover), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XX (Dispute Resolution) and all litigation costs.

“United States” shall mean the United States of America and each department, agency and instrumentality of the United States, including the Settling Federal Agencies and EPA, DOI, NOAA, and DOJ.

“Waste Material” shall mean (1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any “hazardous substance” under Section 7-201(l) of the Environment Article, Annotated Code of Maryland (1993) (as amended).

“Work” shall mean all activities and obligations Settling Performing Defendants are required to perform under this Consent Decree, including but not limited to Appendix E (“Restoration Statement of Work”), except the activities required under Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at the Site by Settling Performing Defendants, to pay response costs of the Plaintiffs, to provide compensation for Natural Resources Damages at the Site, and to resolve the claims of Plaintiffs and Settling Federal Agencies and Settling State

Agencies against Settling Defendants and the claims of the Plaintiffs and Settling Defendants that have been or could have been asserted against the Settling Federal Agencies and Settling State Agencies with regard to the Site as provided in this Consent Decree.

6. Commitments by Settling Defendants, the United States on behalf of the Settling Federal Agencies, and the State on behalf of Settling State Agencies.

a. Settling Performing Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, and the additional work required under the Restoration Statement of Work incorporated into Appendix E, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Settling Performing Defendants and approved by EPA, after review and comment by MDE and after review and approval by the Trustees for those activities required by the Restoration Statement of Work pursuant to this Consent Decree. Settling Performing Defendants shall pay the United States and the Trustees for Past Response Costs and Future Response Costs as provided in this Consent Decree, and shall provide restoration and/or compensation for Natural Resource Damages, as provided in this Consent Decree and its Appendices.

b. The obligations of Settling Performing Defendants to finance and perform the Work, and to pay amounts due under this Consent Decree, are joint and several. In the event of the insolvency of any Settling Performing Defendant or the failure by any Settling Performing Defendant to implement any requirement of this Consent Decree, the remaining Settling Performing Defendants shall complete all such obligations.

c. The Settling Performing Defendants shall implement the restoration work as described, defined and scheduled in Appendix E ("Restoration Statement of Work") of this Consent Decree. The Settling Performing Defendants shall comply with all applicable federal, state, and local laws and regulations when implementing the restoration work. All federal, state, and local permits, rights-of-way, and other documents necessary to implement the restoration work shall be obtained by the Settling Performing Defendants at their expense.

d. As negotiated between Settling Performing Defendants and Settling Non-Performing Defendants, the Settling Non-Performing Defendants each have agreed to pay the Trust, within twenty-five (25) days after lodging of this Consent Decree, all monies necessary to satisfy any claims Settling Performing Defendants may have under, inter alia, sections 106, 107, or 113 of CERCLA for response actions or response costs or natural resource damages relating to, or arising out of the Site in accordance with Ancillary Agreements.

e. Settling Non-Performing Defendants have agreed to pay approximately \$18,800,000.00, as set forth in the Ancillary Agreements. The United States, on behalf of the Settling Federal Agencies, shall pay the Trust \$2,218,600.00 in full settlement of contribution claims for Settling Defendants' Past Response Costs, Settling Performing Defendants' Future Response Costs, and Natural Resource Damages, as provided in this Consent Decree. The State, on behalf of Settling State Agencies, shall pay Settling Performing Defendants \$1,400,972.00 to assist Settling Performing Defendants in conducting or financing Remedial Actions and response actions and for Natural Resource Damages at or in connection with the Site and in payment of Past and Future Response Costs, and Natural Resource Damages, as provided in this Consent Decree.

f. Owner Settling Defendants shall provide access and cooperation to the Settling Performing Defendants as needed for the performance of the Work and shall comply with all applicable requirements of this Consent Decree, including the transfer, deed restriction and

notification obligations. The State agrees to provide access to State property on the Site located in and around I-95 consistent with Appendix G.

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

8. Permits.

a. As provided in Section 121(e) of CERCLA, 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). However, any Work, including any Restoration Work, to be performed in proximity to I-95 shall be in compliance with the Site Access Plan developed as part of the Site Management Plan required pursuant to Paragraph 11.b.1. The requirements of such Site Access Plan are included as Appendix G. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Settling Performing Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Performing Defendants may seek relief under the provisions of Section XIX (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in Paragraph 8.a and required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

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

9. Notice to Successors-in-Title and Transfers of Real Property.

a. For any real property owned or controlled by Owner Settling Defendants located at the Site, Owner Settling Defendants shall, within thirty (30) days after the Effective Date, submit to EPA and MDE for review and approval, after consultation with MDE, a proposed notice to be filed with the appropriate land records office that provides a description of the real property and provides notice to all successors-in-title that the real property is part of the Site, that EPA has selected a remedy for the Site, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. The notice also shall describe the land use restrictions, if any, as provided for in Paragraphs 26.b and 27.b. Such notice(s) shall identify the United States District 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 notice shall also state that information relating to Institutional Controls impacting the property is maintained on the MDE Registry of Environmental Covenants maintained by the Department and include the internet address for the MDE Database (www.mde.maryland.gov/programs/land/marylandbrownfieldvcp/pages/programs/landprograms/erp_brownfields/ueca.aspx). Owner Settling Defendants shall record the notice(s) within ten (10) days of EPA's approval of the notice(s). Owner Settling Defendants shall provide EPA with a certified copy of the recorded notice(s) within ten (10) days of recording such notice(s).

b. Owner Settling Defendants shall, at least sixty (60) days prior to any Transfer of any real property located at the Site, give written notice: (i) to the transferee regarding the Consent Decree and any Institutional Controls regarding the real property; and (ii) to EPA and MDE regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree and any Institutional Controls.

c. Owner Settling Defendants may Transfer any real property located at the Site only if: (1) any Proprietary Controls required by Paragraph 26.c have been recorded in the MDE Registry of Environmental Covenants (www.mde.maryland.gov/programs/land/marylandbrownfieldvcp/pages/programs/landprograms/errp_brownfields/ueca.aspx) with respect to the real property; or (2) Owner Settling Defendants have obtained an agreement from the transferee, enforceable by Settling Performing Defendants and the United States, to (i) allow access and restrict land/water use, pursuant to Paragraphs 27.a and 27.b, (ii) record any Proprietary Controls on the real property in the MDE Database, pursuant to Paragraph 27.c, and (iii) subordinate its rights to any such Proprietary Controls, pursuant to Paragraph 27.c, and EPA has, after consultation with MDE, approved the agreement in writing. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 9.c, such Owner Settling Defendants shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist Owner Settling Defendants in obtaining compliance with the agreement. Such Settling Defendants shall reimburse the United States under Section XVI (Payments for Response and Assessment Costs), for all costs incurred, direct and indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

d. In the event of any Transfer of real property located at the Site, unless the United States, after consultation with the State, otherwise consents in writing, Settling Performing Defendants shall continue to comply with their obligations under the Consent Decree, including, but not limited to, their obligation to provide and/or secure access, to implement, maintain, monitor, and report on Institutional Controls, and to abide by such Institutional Controls.

VI. PERFORMANCE OF THE WORK BY SETTLING PERFORMING DEFENDANTS

10. a. Selection of Supervising Contractor.

i. All aspects of the Work to be performed by Settling Performing Defendants pursuant to Sections VI (Performance of the Work by Settling Performing Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), IX (Access and Institutional Controls), and XV (Emergency Response) and Appendix E (Restoration Statement of Work) shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to acceptance or disapproval by EPA after a reasonable opportunity for review and comment by the State. Within thirty (30) days of the Effective Date, Settling Performing Defendants shall notify EPA and MDE in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Performing Defendants shall demonstrate that the proposed contractor has a quality assurance system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as

determined by EPA. After consultation with MDE, EPA will issue a notice of disapproval or acceptance of the selection of such Supervising Contractor within thirty (30) days of receiving the Settling Performing Defendants' notice of the selected contractor as herein required. If at any time thereafter, Settling Performing Defendants propose to change a Supervising Contractor, Settling Performing Defendants shall give such notice to EPA and MDE and must obtain a notice of acceptance of such change from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

ii. If EPA disapproves the selection of a proposed Supervising Contractor, EPA will notify Settling Performing Defendants in writing. Settling Performing Defendants shall submit to EPA and the State a list of at least two (2) contractors, including the qualifications of each contractor that would be acceptable to them within thirty (30) days of receipt of EPA's disapproval notice. EPA will provide written notice of the names of any contractor(s) whose selection it would accept. Settling Performing Defendants may select any contractor from that list and shall notify EPA and MDE of the name of the contractor selected within twenty-one (21) days of EPA's written notice.

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

b. Other Contractors and Subcontractors

The Settling Performing Defendants shall submit to EPA and MDE, for acceptance by EPA, the names and qualifications of any additional contractors and subcontractors they propose to use to satisfy any requirement of this Consent Decree before such contractor or subcontractor performs any Work. If EPA does not respond with a notice accepting or disapproving the proposal for additional contractors and subcontractors within fourteen (14) days of receipt by EPA of Settling Performing Defendants' selections, the proposal for additional contractors and subcontractors shall be deemed accepted. In the event EPA disapproves any proposed contractor or subcontractor, Settling Performing Defendants shall submit to EPA and MDE a list of at least two (2) other contractors or subcontractors, including the qualifications of each that would be acceptable to them within ten (10) days of receipt of EPA's notice. EPA will provide written notice of the names of any contractor(s) or subcontractor(s) whose selection it would accept. Settling Performing Defendants may select any contractor or subcontractor from that list and shall notify EPA and MDE of the name of the contractor or subcontractor selected within five (5) days of EPA's written notice.

11. Remedial Design/Remedial Action.

a. Within ninety (90) days after EPA's acceptance of the selection of the Supervising Contractor pursuant to Paragraph 10, Settling Performing Defendants shall submit to EPA and MDE a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The RD Work Plan shall be prepared by the individual(s) and/or entity(ies) responsible for completion of the Remedial Design, except to the extent such persons have been disapproved by EPA. The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD and for achievement of the Performance Standards and other requirements set forth in the ROD and this Consent Decree. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this

Consent Decree. The Settling Performing Defendants shall also submit to EPA and the State, at the time the Remedial Design Work plan is submitted, a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120. The Settling Performing Defendants and their Supervising Contractor shall coordinate and cooperate with MDTA to ensure that any Work, including any Restoration Work, to be performed in proximity to I-95 shall be in compliance with the Site Access Plan to be developed as part of the Site Management Plan required pursuant to Paragraph 11.b.1. The requirements of such Site Access Plan are included in Appendix G.

b. The Remedial Design Work Plan shall include plans, schedules, and methodologies for implementation of all remedial design and pre-design tasks and shall include, at a minimum:

1. a Site Management Plan, including a Site Access Plan;
2. a Sampling and Analysis Plan, containing:
 - a. a Field Sampling Plan; and
 - b. a Quality Assurance Project Plan (QAPP);
3. a Remedial Design Contingency Plan;
4. a Treatability Study Work Plan, if deemed necessary by EPA, which includes, at a minimum, plans and schedules for the preparation and submission of a Treatability Study Evaluation Report;
5. Plans and schedules for the preparation and submission of a Preliminary Design Submittal (the preliminary design begins with the initial design and ends with the completion of approximately 30% of the design effort) containing, at a minimum:
 - a. a Design Criteria Report, including:
 - i. project description;
 - ii. design requirements and provisions;
 - iii. preliminary process flow diagrams;
 - iv. operation & maintenance requirements;
 - b. a Basis of Design Report, including:
 - i. justification of design assumptions;
 - ii. a project delivery strategy;
 - iii. Remedial Action permits plan for off-site permits;
 - iv. preliminary easement/access requirements;
 - c. Preliminary Drawings and Specifications, including:
 - i. outline of general specifications;
 - ii. preliminary schematics and drawings;

- iii. chemical and geotechnical data (including data from pre-design activities);
 - d. a value engineering screen; and
 - e. preliminary Remedial Action schedule.
6. Plans and schedules for the preparation and submission of a pre-final design submittal which shall be submitted at approximately 90% of the design effort and shall address all of EPA's comments to the preliminary design, and, at a minimum, additionally include:
- a. a preliminary Operation & Maintenance Plan;
 - b. a preliminary Construction Quality Assurance Plan ("CQAP") which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project);
 - c. a draft Remedial Action Plan;
 - d. a draft Remedial Action schedule;
 - e. a draft Remedial Action contingency plan; and
 - f. a draft Remedial Action HASP for EPA acceptance;
 - g. a draft Remedial Action Sampling and Analysis Plan;
 - h. a draft Remedial Action Waste Management Plan;
 - i. a revised Basis of Design Report, if necessary;
 - j. a revised Design Criteria Report, if necessary; and
 - k. any value engineering study results.
7. Plans and schedules for the preparation and submission of a final design submittal which shall be submitted at 100% of the design effort and shall address all of EPA's comments to the pre-final design, and, at a minimum, additionally include:
- a. a final Remedial Action schedule;
 - b. a final Remedial Action contingency plan;
 - c. a final Remedial Action HASP for EPA acceptance;
 - d. a final Remedial Action Waste Management Plan;
 - e. a final Design Criteria Report;
 - f. a final Remedial Action Sampling and Analysis Plan (directed at measuring progress towards meeting the Performance Standards);
 - g. a final Basis of Design Report;

- h. final Drawings and Specifications;
 - i. a revised Operation & Maintenance Plan and a schedule for submission of the final Operation & Maintenance Plan;
 - j. a final Construction Quality Assurance Plan;
 - k. a final Remedial Action decontamination plan; and
 - l. a final project delivery strategy.
8. a Remedial Design schedule.
9. Institutional Control Implementation and Assurance Plan. The Plan shall include, but not be limited to
- a. a plan for monitoring, maintaining, reporting on, and insuring the continued efficacy of the Institutional Controls and a contingency plan in the event Institutional Controls are ineffective; and
 - b. a schedule for annual certifications regarding whether the Institutional Controls remain in place, regarding whether the Institutional Controls have been complied with, and regarding enforcement of the Institutional Controls.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Performing Defendants shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Settling Performing Defendants shall submit to EPA and the State all plans, submittals, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Unless otherwise directed by EPA, Settling Performing Defendants shall not commence further Remedial Design field activities at the Site prior to approval of the Remedial Design Work Plan.

d. Upon approval, approval with conditions, or modification by EPA, as provided in Section XI (EPA Approval of Plans, Reports, and Other Deliverables), of all components of the final design submittal, the final design submittal shall serve as the Remedial Action Work Plan and shall be enforceable under this Consent Decree. The Settling Performing Defendants shall implement the activities required under the Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

e. The Settling Performing Defendants shall submit all plans, submittals, or other deliverables required under the Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA or required under the Remedial Design Work Plan, the Settling Performing Defendants shall not commence physical activities at the Site prior to the date for commencement set forth in the approved schedule in the Remedial Action Work Plan.

12. Resident Engineer. Following EPA approval, approval with conditions, or modification by EPA, as provided in Section XI (EPA Approval of Plans and Other Submissions), of all components of the final design submittal, and prior to commencement of any on-Site Work

under the Remedial Action Work Plan, the Settling Performing Defendants shall submit to EPA and MDE the name and qualifications of a Resident Engineer to be present at the Site during construction to ensure that the Work is performed in accordance with the approved Remedial Action Work Plan. The Resident Engineer shall be familiar with all aspects of the Remedial Design approved by EPA. EPA retains the right to disapprove, after consultation with MDE, the use of any Resident Engineer proposed by Settling Performing Defendants. In the event EPA disapproves the use of any proposed Resident Engineer, Settling Performing Defendants shall submit to EPA and MDE a list of at least two (2) replacements, including the qualifications of each, who would be acceptable to them within thirty (30) days of receipt of EPA's notice. EPA will provide written notice of the names of any replacements whose use it would accept. Settling Performing Defendants may select any replacement from the EPA notice and shall notify EPA and MDE of the name of the replacement selected within seven (7) days of EPA's written notice. Settling Performing Defendants shall ensure that the Resident Engineer performs on-Site inspections as necessary to ensure compliance with the approved Remedial Action Work Plan and that the results of such inspections are promptly provided to Settling Performing Defendants, EPA, and MDE. The Resident Engineer may act as the QA Official.

13. Settling Performing Defendants shall continue to implement the Remedial Action until the Performance Standards are achieved. Settling Performing Defendants shall implement O&M for so long thereafter as is required by this Consent Decree.

14. Modification of the Work.

a. If EPA, after consultation with MDE, determines that it is necessary to modify the Work to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, and such modification is consistent with the scope of the remedy set forth in the ROD, then EPA may issue such modification in writing and shall notify Settling Performing Defendants of such modification. Should EPA determine that modification of the Work is required on that portion of real property on which I-95 is located, EPA will notify MDTA and secure MDTA's input consistent with the Site Access Plan developed as part of the Site Management Plan required pursuant to Paragraph 11.b.1. The requirements for such Site Access Plan is included as Appendix G. For the purposes of this Paragraph and Paragraphs 50 (Completion of the Remedial Action) and 51 (Completion of the Work) only, the "scope of the remedy set forth in the ROD" includes, but is not limited to:

1. tasks employing a technology or combination of technologies discussed in Section L.2 (Selected Remedy) of the ROD to achieve and maintain the objectives described in the ROD. The selected remedy divides the Site into five "Management Areas" (MAs) identified as MA-A, MA-B, MA-D, MA-E, and MA-F. Certain elements of the remedy are common to all of the MAs, including, but not limited to: recycling or on-Site disposal of non-hazardous surface debris and off-Site disposal of hazardous debris; passive venting of landfill gas and evaluating new structures for impacts from vapors; and construction of access barriers and implementation of a Site security program. In addition to the elements of the Selected Remedy which are common to all MAs, each MA has its own additional elements, including, but not limited to:
 - i. MA-A: Removal of surface water from the tire pond and excavation and off-Site disposal of sediment from the tire pond;

- ii. MA-B: Construction of a soil cover over the landfill and re-vegetation with native species; installation of a collection trench; conveyance of leachate and groundwater to a sanitary sewer for treatment at a wastewater treatment facility; treatment of leachate and groundwater by enhanced wetlands in certain areas; and extraction, to the maximum extent practicable, and recycling or treating and disposing of the oily free-product;
 - iii. MA-D: Construction of a soil cover over the landfill and re-vegetation with native species; treatment of leachate and groundwater by constructing enhanced wetlands surrounding Horseshoe Pond and the adjacent wetlands; and planting deep-rooted vegetation along the stream bank next to Herring Run;
 - iv. MA-E: Extraction of surface soils in some locations; enhancement of existing soil cover; repair of eroded areas; removal of surface water and sediments from Pond T-10, extraction and recycling or disposal of oily free-product; and construction of a biowall to reduce product migration;
 - v. MA-F: Construction of a soil cover over the landfill and re-vegetation with native species; installation of a collection trench parallel to Redhouse Run; conveyance of leachate and groundwater to a sanitary sewer; removal of surface water from Horseshoe Pond; excavation of sediment from Horseshoe Pond and adjacent wetlands, as well as areas that exceed certain contamination limits; and stabilization of distressed, eroded, and scoured stream banks.
- 2. tasks associated with monitoring of Site conditions and the effectiveness of the Remedial Action and establishment of maintenance programs.
 - 3. implementation of Institutional Controls, including environmental covenants and zoning restrictions to limit future use. Restrictions include precluding any future use of the Site for residential purposes and prohibiting subsurface disturbance of landfill units, none of which are located in MA-A, and use of groundwater.

If Settling Performing Defendants object to the modification they may, within thirty (30) days after EPA's notification, seek dispute resolution under Paragraph 76 (Record Review).

b. All work plans and other documents impacted by a modification issued by EPA shall be modified: (i) in accordance with the modification issued by EPA; or (ii) if Settling Performing Defendants invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Settling Performing Defendants shall implement all work required by such modification. Settling Performing Defendants shall incorporate the modification into the Remedial Design or Remedial Action Work Plan, as appropriate.

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

15. Nothing in this Consent Decree or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiffs that compliance with the work requirements set forth in the Work Plans will achieve the Performance Standards.

16. Off-Site Shipment of Waste Material.

a. Settling Performing Defendants may ship Waste Material from the Site to an off-Site facility only if they obtain written verification, prior to any shipment, that the off-Site facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440, by obtaining a determination from EPA that the proposed receiving facility is operating in compliance with 42 U.S.C. § 9621(d)(3) and 40 C.F.R. § 300.440.

b. Settling Performing Defendants may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the EPA and MDE Project Coordinators. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten (10) cubic yards. The written notice shall include the following information, if available: (i) the name and location of the receiving facility; (ii) the type and quantity of Waste Material to be shipped; (iii) the schedule for the shipment; and (iv) the method of transportation. Settling Performing Defendants also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Settling Performing Defendants shall provide the written notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.

VII. REMEDY REVIEW

17. Periodic Review. EPA will perform reviews of whether the Remedial Action is protective of human health and the environment at least every five (5) years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations. Settling Performing Defendants shall conduct any studies and investigations that EPA, after consultation with MDE, requests in order to permit EPA to conduct such reviews.

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

19. Opportunity to Comment. Settling Performing Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 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 EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Settling Performing Defendants' Obligation to Perform Further Response Actions. If EPA selects further response actions for the Site, EPA may require Settling Performing Defendants to perform such further response actions, but only to the extent that the reopener conditions in Paragraph 94 or Paragraph 95 (United States' Pre- or Post-Certification Reservations) are satisfied. Settling Performing Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraph 94 or Paragraph 95 of Section XXII (Covenants by Plaintiffs) are satisfied, (b) EPA's determination that the Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 76 (Record Review). Should EPA determine that performance

of such further response actions is required on that portion of real property on which I-95 is located, EPA will notify MDTA and secure MDTA's input consistent with the Site Access Plan developed as part of the Site Management Plan required pursuant to Paragraph 11.b.1. The requirements for such Site Access Plan are included as Appendix G.

21. Submission of Plans. If Settling Performing Defendants are required to perform further response actions pursuant to Paragraph 20, they shall submit a plan for all such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by Settling Performing Defendants). Settling Performing Defendants shall also submit the plan to MDE. Settling Performing Defendants shall implement the approved plan in accordance with this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Quality Assurance.

a. Settling Performing Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and subsequent amendments to such guidelines upon notification by EPA to Settling Performing Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Consent Decree, Settling Performing Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by MDE, a Quality Assurance Project Plan ("QAPP") that is consistent with the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. Settling Performing Defendants shall ensure that EPA and MDE personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Performing Defendants in implementing this Consent Decree. In addition, Settling Performing Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA and MDE pursuant to the QAPP for quality assurance monitoring. Settling Performing Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods that are documented in the "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4," and the "USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2," and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by MDE, Settling Performing Defendants may use other analytical methods which are as stringent as or more stringent than the Contract Lab Program-approved methods. Settling Performing Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent Quality Assurance/Quality Control ("QA/QC") program. Settling Performing Defendants shall use only laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as

determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements. Settling Performing Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

23. Upon request, Settling Performing Defendants shall allow split or duplicate samples to be taken by EPA and MDE or their authorized representatives. Settling Performing Defendants shall notify EPA and MDE not less than twenty-eight (28) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and MDE shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA and MDE shall allow Settling Performing Defendants to take split or duplicate samples of any samples it takes as part of Plaintiffs' oversight of Settling Performing Defendants' implementation of the Work.

24. Settling Performing Defendants shall submit to EPA and MDE three (3) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Performing Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their 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

26. If the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by any of Settling Defendants:

a. Except for the State Property identified in Appendix G, such Settling Defendants shall, commencing on the date of lodging of the Consent Decree, provide the United States and the Settling Performing Defendants, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Site, or such other real property, to conduct any activity regarding the Consent Decree including, but not limited to, the following activities:

1. Monitoring the Work;
2. Verifying any data or information submitted to the United States;
3. Conducting investigations regarding 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. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
7. Implementing the Work pursuant to the conditions set forth in Paragraph 99 (Work Takeover);

8. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by such Settling Defendants or their agents, consistent with Section XXV (Access to Information);
 9. Assessing Settling Performing Defendants' compliance with the Consent Decree;
 10. Determining whether the Site or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and
 11. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.
- b. commencing on the date of lodging of the Consent Decree, such Settling Defendants shall not use the Site, or such other real property, in any manner that EPA or MDE determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action and O&M. The restrictions shall include, but not be limited to: precluding future use of the Site for residential purposes, prohibiting subsurface disturbance in landfill units (none of which have been found in MA-A), and prohibiting use of groundwater at the Site. However, such restrictions shall in no way limit MDTA in performing its responsibilities to maintain, operate, and ensure the safety of I-95 structures which activities shall be consistent with the Site Access Plan developed as part of the Site Management Plan required pursuant to Paragraph 11.b.1. The requirements for such Site Access Plan are included as Appendix G; and
- c. Such Settling Defendants shall:
1. execute and record in the Recorder's Office of the county where each parcel of the Site is located, pursuant to Sections 1-801 to 1-815 of the Maryland Uniform Environmental Covenants Act, Md. Environmental Code Ann. §§ 1-801 to 1-815, an environmental covenant (Environmental Covenant) that: (i) grants a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 26.a, and (ii) grants the right to enforce the land/water use restrictions set forth in Paragraph 26.b, including, but not limited to, the specific restrictions listed therein, as further specified in this Paragraph 26.c;
 2. grant the Environmental Covenant to the Settling Performing Defendants ("Holder Settling Defendants"). The Holder Settling Defendants shall monitor, maintain, report on and enforce such Environmental Covenant. The Environmental Covenant shall specify EPA and the State as "agencies," as defined in the Md. Environment Code Ann. § 1-801(c), which shall have the right to enforce the covenant, pursuant to Md. Environment Code Ann. § 1-810; and

3. within sixty (60) days of the Effective Date, submit to EPA and MDE for review and approval regarding such real property: (i) a draft Environmental Covenant that is enforceable under state law; and (ii) with the exception of the State, a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Environmental Covenant to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Performing Defendants are unable to obtain release or subordination of such prior liens or encumbrances)

d. Within fifteen (15) days of EPA's approval, after consultation with MDE, and acceptance of the Environmental Covenant and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Environmental Covenant with the appropriate land records office. Within thirty (30) days of recording the Environmental Covenant, such Settling Defendants shall provide EPA and MDE with a final title insurance policy, or other final evidence of title acceptable to EPA and MDE, and a certified copy of the original recorded Environmental Covenant showing the clerk's recording stamps.

27. If the Site, or any other real property where access and/or land/water use restrictions are needed, is owned or controlled by persons other than any Settling Defendant, Settling Performing Defendants shall use best efforts to secure from such persons:

- a. an agreement to provide access thereto for the United States and Settling Performing Defendants, and their representatives, contractors and subcontractors, to conduct any activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraph 26.a;
- b. an agreement, enforceable by Settling Performing Defendants and the United States, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action and O&M. The agreement shall include, but not be limited to, the land/water use restrictions listed in Paragraph 26.b; and
- c. the execution and recordation in the appropriate land records office pursuant to Sections 1-801 to 1-815 of the Maryland Uniform Environmental Covenants Act, Md. Environment Code Ann. §§ 1-801 to 1-815, an Environmental Covenant that (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 26.a, and (ii) grant the right to enforce the land/water use restrictions set forth in Paragraph 26.b, including, but not limited to, the specific restrictions listed therein. If any Environmental Covenants are granted to any Settling Performing Defendants pursuant to this Paragraph 27.c, then such Settling Performing Defendants shall monitor, maintain, report on, and enforce such Environmental Covenants. The Environmental Covenants shall specify EPA and the State as "Agencies," as defined by Md. Environment Code Ann. § 1-801 (c), which shall have the right to enforce the covenant, pursuant to Md. Environment Code Ann. § 1-810.

d. Within sixty (60) days of the Effective Date, Settling Performing Defendants shall submit to EPA and MDE for review and approval regarding such property: (i) a draft Environmental Covenant that is enforceable under state law; and (ii) a current title insurance commitment, or other evidence of title acceptable to EPA, which shows title to the land affected by the Environmental Covenant to be free and clear of all prior liens and encumbrances (except when EPA and MDE waive the release or subordination of such prior liens or encumbrances or when, despite best efforts, Settling Performing Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

e. Within thirty (30) days of approval and acceptance of the Environmental Covenant and the title evidence by EPA and MDE, Settling Performing Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, the Environmental Covenant shall be recorded with the appropriate land records office. The notice also shall identify the United States District 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. Within thirty (30) days of the recording of the Environmental Covenant, Settling Performing Defendants shall provide EPA and MDE with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Environmental Covenant showing the clerk's recording stamps.

28. For purposes of Paragraphs 26 and 27, "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, an Environmental Covenant, and/or an agreement to release or subordinate a prior lien or encumbrance. If, within ninety (90) days of the Effective Date or within 90 days of the date that access will be required, whichever is later, Settling Performing Defendants have not: (a) obtained agreements to provide access, restrict land/water use, or record an Environmental Easement as required by Paragraph 27.a, 27.b or 27.c; or (b) obtained, pursuant to Paragraph 26.c. or 27.c., agreements from the holders of prior liens or encumbrances to release or subordinate such liens or encumbrances to the Environmental Covenant, Settling Performing Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Performing Defendants have taken to attempt to comply with Paragraph 26 or 27. The United States may, as it deems appropriate, assist Settling Performing Defendants in obtaining access, agreements to restrict land/water use, Environmental Covenants, or the release or subordination of a prior lien or encumbrance. Settling Performing Defendants shall reimburse the United States under Section XVI (Payments for Response and Assessment Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, agreements to restrict land/water use Environmental Covenants, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid for just compensation.

29. If EPA or MDE determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed, Settling Performing Defendants shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls.

30. Notwithstanding any provision of the Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Performing Defendants shall submit to EPA and MDE two (2) hard copies and one (1) electronic 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 Performing Defendants or their contractors or agents in the previous month; (c) identify all plans, reports, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six (6) weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Performing Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six (6) weeks. Settling Performing Defendants shall submit these progress reports to EPA and MDE by the tenth day of every month following the lodging of this Consent Decree until EPA notifies Settling Performing Defendants pursuant to Paragraph 51.b of Section XIV (Certification of Completion). If requested by EPA or MDE, Settling Performing Defendants shall also provide briefings for EPA and MDE to discuss the progress of the Work.

32. Settling Performing Defendants shall notify EPA and MDE of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, implementation of work plans, no later than seven (7) days prior to the performance of the activity. Notwithstanding the foregoing, the Settling Performing Defendants shall notify EPA of any change in the schedule described in the monthly progress reports for the performance of data collection no later than thirty (30) days prior to the performance of such activity.

33. Upon the occurrence of any event during performance of the Work that Settling Performing Defendants are required to report pursuant to Section 103 of CERCLA, 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 Performing Defendants shall within twenty-four (24) hours of the onset of such event orally notify the EPA Project Coordinator (or his or her alternate, as necessary) or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the EPA Region III Hotline at (215) 814-3255, Emergency Response Section, Region III, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within twenty (20) days of the onset of such an event, Settling Performing Defendants shall furnish to EPA and MDE a written report, signed by Settling Performing Defendants' Project Coordinator, setting forth the events that occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Performing Defendants shall submit a report setting forth all actions taken in response thereto.

35. Settling Performing Defendants shall submit two (2) hard copies and one (1) electronic copy of all plans, reports, data, and other deliverables required by the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Performing Defendants shall simultaneously submit two (2) hard copies and one (1) electronic copy of all such plans, reports, data, and other deliverables to MDE. Upon request by EPA, Settling Performing Defendants shall submit in electronic form all or any portion of any deliverables Settling Performing Defendants are required to submit pursuant to the provisions of this Consent Decree.

36. All deliverables submitted by Settling Performing Defendants to EPA and MDE which purport to document Settling Performing Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Performing Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. Initial Submissions.

a. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by MDE, shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

b. EPA, after consultation with MDE, also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

38. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 37.a.(iii) or (iv), or if required by a notice of approval upon specified conditions under Paragraph 37.a.(ii), Settling Performing Defendants shall, within forty-five (45) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, EPA, after consultation with MDE, may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Settling Performing Defendants to correct the deficiencies; or (e) any combination of the foregoing.

39. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 37.b.(ii) or 38 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 79. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Settling Performing Defendants' submissions under this Section.

40. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 37 or 38, of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) Settling Performing Defendants shall take any

action required by such plan, report, or other deliverable, or portion thereof, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 37 or 38 shall not relieve Settling Performing Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

XII. PROJECT COORDINATORS

41. a. The EPA Project Coordinator and Alternate Project Coordinator for this Site are:

EPA Project Coordinator:

Nick Tymchenko (3HS22)

U.S. Environmental Protection Agency

1650 Arch Street

Philadelphia, PA 19103

(215) 814-2022 (phone)

(215) 814-3002 (telefax)

tymchenko.nick@epa.gov

EPA Alternate Project Coordinator:

Kristine Matzko (3HS22)

U.S. Environmental Protection Agency

1650 Arch Street

Philadelphia, PA 19103

(215) 814-5719 (phone)

(215) 814-3002 (telefax)

matzko.kristine@epa.gov

b. Within thirty (30) days of the Effective Date, Settling Performing Defendants will notify each other and EPA, 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 five (5) working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Settling Performing Defendants' Project Coordinator and Alternate Project Coordinator shall be subject to disapproval by EPA, after consultation with MDE, and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Settling Performing Defendants' Project Coordinator and Alternate Project Coordinator shall not be an attorney for any Settling Performing Defendant in this matter but may be the Supervising Contractor. 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.

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

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 he or she 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 a release or threatened release of Waste Material.

43. EPA's Project Coordinator and Settling Performing Defendants' Project Coordinator will meet or confer, at a minimum, on a monthly basis.

XIII. PERFORMANCE GUARANTEE

44. In order to ensure the full and final completion of the Work, Settling Performing Defendants shall establish and maintain a performance guarantee, initially in the amount of \$51,490,000.00, for the benefit of EPA (hereinafter "Estimated Cost of the Work"). The performance guarantee, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Settling Defendants intend to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds, and no more than two financial demonstrations pursuant to subparagraph d:

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters-of-credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters-of-credit and (ii) whose letter-of-credit operations are regulated and examined by a federal or state agency. For the purposes of this Subparagraph 44.b, EPA approves the use of provisions in the Sample Form Letter of Credit found in Appendix H;

c. A trust fund established for the benefit of EPA that is administered by a trustee (i) that has the authority to act as a trustee and (ii) whose trust operations are regulated and examined by a federal or state agency; or

d. A demonstration by no more than two Settling Performing Defendants, totaling no more than \$2,500,000 of the total \$51,490,000 required performance guarantee, that such Settling Performing Defendants meet the financial test criteria of 40 C.F.R. § 264.143(f) with respect to their portion of the Estimated Cost of the Work not to exceed \$2,500,000, provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction.

45. Settling Performing Defendants have selected, and EPA has found satisfactory, as an initial performance guarantee the forms of performance guarantee set forth in Paragraph 44. Within thirty (30) days after the Effective Date, Settling Performing Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding and such performance guarantee(s) shall thereupon be fully effective. Within forty (40) days of the Effective Date, Settling Performing Defendants shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Regional Financial Management Officer in accordance with Section XXVII (Notices and Submissions), with a copy to Tanesha Paige or other designee (3HS62), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, and to the United States and EPA as specified in Section XXVII (Notices and Submissions).

46. If, at any time after the Effective Date and before issuance of the Certification of Completion of the Work pursuant to Paragraph 51, Settling Performing Defendants provide a performance guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 44.d, the relevant Settling Performing Defendants shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Consent Decree, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer ("CFO") and independent certified public accountant ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at: <http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf>; (b) the annual re-submission of such reports and statements within ninety (90) days after the close of each such entity's fiscal year; and (c) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within ninety (90) days after the close of any fiscal year in which such entity no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include the Estimated Cost of the Work; the terms "owner" and "operator" shall be deemed to refer to each Settling Performing Defendant making a demonstration under Paragraph 44.d; and the terms "facility" and "hazardous waste facility" shall be deemed to include the Site.

47. In the event that EPA, after consultation with MDE, determines at any time that a performance guarantee provided by any Settling Performing Defendant pursuant to this Section XIII is inadequate or otherwise no longer satisfies the requirements set forth in this Section XIII, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Settling Performing Defendant becomes aware of information indicating that a performance guarantee provided pursuant to this Section XIII is inadequate or otherwise no longer satisfies the requirements set forth in this Section XIII, whether due to an increase in the estimated cost of completing the Work or for any other reason, Settling Performing Defendants, within thirty (30) days of receipt of notice of EPA's determination or, as the case may be, within thirty (30) days of any Settling Performing Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 44 that satisfies all requirements set forth in this Section XIII; provided, however, that if any Settling Performing Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that the Settling Performing Defendant shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for the Settling Performing Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed sixty (60) days. On day thirty (30), Settling Performing Defendant shall provide to EPA a status report on its efforts to obtain the revised or alternative form of guarantee. In seeking approval for a revised or alternative form of performance guarantee, Settling Performing Defendants shall follow the procedures set forth in Paragraph 49.b.2. Settling Performing Defendants' inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of Settling

Performing Defendants to complete the Work in strict accordance with the terms of this Consent Decree.

48. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 99 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 44.a, 44.b, or 44.c and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if (a) for any reason EPA is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or (b) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 44.d, Settling Performing Defendants shall immediately upon written demand from EPA deposit into a special account within the EPA Hazardous Substance Superfund or such other account as EPA may specify, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA. In addition, if at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless Settling Performing Defendants provide a substitute performance guarantee mechanism in accordance with this Section XIII no later than thirty (30) days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is thirty (30) days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee. All EPA Work Takeover costs not reimbursed under this Paragraph shall be reimbursed under Section XVI (Payments for Response and Assessment Costs).

49. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If Settling Performing Defendants believe that the estimated cost of completing the Work has diminished below the amount set forth in Paragraph 44, Settling Performing Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the performance guarantee provided pursuant to this Section so that the amount of the performance guarantee is equal to the estimated cost of completing the Work. Settling Performing Defendants shall submit a written proposal for such reduction to EPA, with a copy to MDE, that shall specify, at a minimum, the estimated cost of completing the Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the performance guarantee, Settling Performing Defendants shall follow the procedures set forth in Paragraph 49.b.2 for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 49.a. If EPA, after consultation with MDE, decides to accept Settling Performing Defendants' proposal for a reduction in the amount of the performance guarantee, either to the amount set forth in Settling Performing Defendants' written proposal or to some other amount as selected by EPA, EPA will notify the petitioning Settling Performing Defendants of such decision in writing. Upon EPA's acceptance of a reduction in the amount of the performance guarantee, the Estimated Cost of the Work shall be deemed to be the estimated cost of completing the Work set forth in EPA's written decision. After receiving EPA's written decision, Settling Performing Defendants may reduce the amount of the performance guarantee in accordance with and to the extent permitted by such written acceptance and shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding in accordance with

Paragraph 49.b.2. In the event of a dispute, Settling Performing Defendants may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XX (Dispute Resolution). No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 47 or 49.b or 49.c.

b. Change of Form of Performance Guarantee.

1. If, after the Effective Date, Settling Performing Defendants desire to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Settling Performing Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing, with a copy to MDE, to request a change in the form or terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 49.b.2. Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Settling Performing Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

2. Settling Performing Defendants shall submit a written proposal for a revised or alternative performance guarantee to EPA, with a copy to MDE, which shall specify, at a minimum, the estimated cost of completing the Work, the basis upon which such cost was calculated, and the proposed revised performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Settling Performing Defendants shall submit such proposed revised or alternative performance guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVII (Notices and Submissions), with a copy to Tanesha Paige or other designee (3HS62), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. EPA, after consultation with MDE, will notify Settling Performing Defendants in writing of its decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this Paragraph. Within thirty (30) days after receiving a written decision approving the proposed revised or alternative performance guarantee, Settling Performing Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Settling Performing Defendants shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Regional Financial Management Officer within forty (40) days of receiving a written decision approving the proposed revised or alternative performance guarantee in accordance with Section XXVII (Notices and Submissions), with a copy to Tanesha Paige or other designee (3HS62), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103 and to the United States and EPA and MDE as specified in Section XXVII.

c. Release of Performance Guarantee. Settling Performing Defendants shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If Settling Performing Defendants receive written notice from EPA in accordance with Paragraph 51 that the Work has been fully and finally completed in

accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Settling Performing Defendants in writing, Settling Performing Defendants may thereafter release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section XIII. In the event of a dispute, Settling Performing Defendants may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XX (Dispute Resolution).

XIV. CERTIFICATION OF COMPLETION

50. Completion of the Remedial Action.

a. Within ninety (90) days after Settling Performing Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been achieved, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants, EPA, and MDE. If, after the pre-certification inspection, Settling Performing Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been achieved, they shall submit a written report requesting a Certification of Completion of Remedial Action to EPA for approval, with a copy to MDE, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and Settling Performing 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 stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Performing Defendant or Settling Performing Defendants' Project Coordinator:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by MDE, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Settling Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the ROD," as that term is defined in Paragraph 14.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require Settling Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Performing 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 XX (Dispute Resolution).

b. If EPA determines, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by MDE, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Performing 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 XXII (Covenants by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Settling Performing Defendants' remaining obligations under this Consent Decree.

51. Completion of the Work.

a. Within ninety (90) days after Settling Performing Defendants conclude that all phases of the Work, other than any remaining activities required under Section VII (Remedy Review), have been fully performed, Settling Performing Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Defendants, EPA, and MDE. If, after the pre-certification inspection, Settling Performing Defendants still believe that the Work has been fully performed, Settling Performing 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 statement set forth in Paragraph 50.a, signed by a responsible corporate official of a Settling Performing Defendant or Settling Performing Defendants' Project Coordinator. If, after review of the written report, EPA, after reasonable opportunity for review and comment by MDE, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Performing Defendants in writing of the activities that must be undertaken by Settling Performing Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Performing Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the ROD," as that term is defined in Paragraph 14.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require Settling Performing Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Performing 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 XX (Dispute Resolution).

b. If EPA determines, based on the initial or any subsequent request for Certification of Completion of the Work by Settling Performing Defendants, and after a reasonable opportunity for review and comment by MDE, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Settling Performing Defendants in writing.

XV. EMERGENCY RESPONSE

52. If 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 Performing Defendants shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA and

MDE Project Coordinators (or their alternates, if necessary). If neither the EPA's Project Coordinator nor EPA's Alternate Project Coordinator is available, Settling Performing Defendants shall notify the EPA Region III Hotline at (215) 814-3255. Settling Performing Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that Settling Performing Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, MDE takes such action instead, Settling Performing Defendants shall reimburse EPA and MDE all costs of the response action under Section XVI (Payments for Response and Assessment Costs).

53. Subject to Section XXII (Covenants by Plaintiffs), 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.

XVI. PAYMENTS FOR RESPONSE AND ASSESSMENT COSTS

54. Settling Non-Performing Defendants shall make payments to the Trust as required by the Ancillary Agreements referenced in Section IV of this Consent Decree to assist in financing the Work, and provide reimbursement for Natural Resource Damages, Future Oversight Costs, and pay Future Response Costs.

55. Past Response Costs.

The EPA and State agree not to seek payment of Past Response Costs (which does not include Natural Resource Damages, Past Trustee Assessment Costs, or Trustee Future Assessment Costs) from Settling Defendants, Settling Federal Agencies, or Settling State Agencies in consideration for this Consent Decree wherein Settling Defendants, Settling Federal Agencies, and Settling State Agencies have agreed to finance and/or perform Work and pay Future Response Costs.

56. Payments for Past Natural Resource Damages. Settling Performing Defendants shall pay a total of \$240,000.00 for past Natural Resource Damages assessment costs as described below. Payments for past costs shall be made according to the following schedule:

25% within 30 days after Effective Date;

25% within 1 year of Effective Date; and

50% within 2 years of Effective Date.

a. Payments for Past Natural Resource Damages Incurred by the United States

Settling Performing Defendants shall pay a total of \$220,970.00 to the United States for assessment costs incurred by the United States. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2017V00343, and DOJ Case Number 90-11-3-10830. Payment shall be made in accordance with instructions provided to the Settling Performing Defendants by the Financial Litigation Unit of the United States Attorney's Office for

the District of Maryland following lodging of the Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

Of the total amount to be paid by Defendants pursuant to this provision:

- (i) \$52,090 shall be deposited into the Department of the Interior Natural Resource Damage Assessment and Restoration Fund (“DOI NRDAR”), to be applied toward natural resource damage assessment costs incurred by DOI:
25% within 30 days after Effective Date (\$13,022.50);
25% within 1 year of Effective Date (\$13,022.50); and
50% within 2 years of Effective Date (\$26,045.00);
- (ii) \$168,880 shall be deposited into the NOAA Damage Assessment and Restoration Revolving Fund (DARRF) Fund, to be applied toward natural resource damage assessment costs incurred by NOAA:
25% within 30 days after Effective Date (\$42,220.00);
25% within 1 year of Effective Date (\$42,220.00); and
50% within 2 years of Effective Date (\$84,440.00);

b. Payments for Past Natural Resource Damages Incurred by the State

Settling Defendants shall pay a total of \$19,030 to the State of Maryland for assessment costs incurred by the State:

- 25% within 30 days after Effective Date (\$4,757.50);
- 25% within 1 year of Effective Date (\$4,757.50); and
- 50% within 2 years of Effective Date (\$9,515.00).

Payment shall be made by check payable to Maryland Department of Natural Resources, reference “68th Street Dump Superfund Alternative Site”, mailed to:

Accounts Receivable
Finance and Administrative Services
Maryland Department of Natural Resources
580 Taylor Avenue, B-4
Annapolis, MD 21401

57. Payments by Settling Performing Defendants for EPA’s Future Response Costs.

Settling Performing Defendants shall pay to EPA all of its Future Response Costs not inconsistent with the NCP, excluding Future Oversight Costs.

a. On a periodic basis, EPA will send Settling Performing Defendants a bill requiring payment that includes a cost summary which includes direct and indirect costs incurred by EPA and DOJ and their contractors. Settling Performing Defendants shall make all payments within thirty (30) days of Settling Performing Defendants’ receipt of each bill requiring payment, except as otherwise provided in Paragraph 62, in accordance with Paragraphs 61.a and 61.b (Payment Instructions).

b. The total amount to be paid by Settling Performing Defendants pursuant to Paragraph 57.a shall be deposited by EPA in the 68th Street Dump Site Special Account to be

retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

58. Payments by Settling Performing Defendants for the Trustees' Future Oversight Costs. Settling Performing Defendants shall reimburse the Trustees' documented Future Oversight Costs in an amount not to exceed a total of \$250,000. For accounting purposes, Trustees Future Costs shall be from a period commencing from November 1, 2015 (when Past Costs attribution ceased), and deducted from the total amount not to exceed \$250,000.00.

On a periodic basis, the Trustees will send Settling Performing Defendants a bill requiring payment that includes a cost summary which includes direct and indirect costs incurred by Trustees and their contractors. Settling Performing Defendants shall make all payments within thirty (30) days of Settling Performing Defendants' receipt of each bill requiring payment, in accordance with the following:

a. For NOAA: electronically according to instructions to be provided to Settling Performing Defendants at the time of billing, and with notification of payment sent via electronic mail and U.S. mail to:

NOAA/U.S. Department of Commerce
NOAA Office of Response and Restoration
Attn: Donna Roberts, DARRF Manager
1315 East-West Highway
Silver Spring, MD 20910-3281
donna.roberts@noaa.gov
and
Kate Barfield
National Oceanic and Atmospheric Administration
Office of General Counsel National Resources
1315 East-West Highway
SSMC3# Room 15107
Silver Spring, MD 20910-3282
kate.barfield@noaa.gov

b. For DOI: electronically according to instructions to be provided to Settling Performing Defendants at the time of billing, and with notification of payment sent via electronic mail and U.S. mail to:

Department of the Interior
Natural Resource Damage Assessment and Restoration Program
Attn: Bruce Nessler, Restoration Fund Manager
1849 C Street, NW
Mail Stop 4449
Washington, D.C. 20240
bruce_nessler@ios.doi.gov
and
Mark Barash, Esq.
U.S. Department of the Interior
Office of the Regional Solicitor
15 State Street, 8th Floor
Boston, MA 02109-3502

mark.barash@sol.doi.gov

c. For the State: electronically according to instructions to be provided to Settling Performing Defendants at the time of billing, and with notification of payment sent via electronic mail and U.S. mail to:

Director
Chesapeake and Coastal Service
Department of Natural Resources
580 Taylor Ave. E-2
Annapolis, MD 21401
matthew.fleming@maryland.gov
and
Principal Counsel
Maryland Department of Natural Resources
580 Taylor Ave. C-4
Annapolis, MD 21401
jennifer.wazenski@maryland.gov

59. Payments by Settling Federal Agencies and Settling State Agencies.

- a. Payment by Settling Federal Agencies to Settling Performing Defendants.
As soon as reasonably practicable after the Effective Date, the United States, on behalf of Settling Federal Agencies, shall pay to the Trust \$2,218,600 in full settlement of contribution claims for Settling Defendants' Past Response Costs, Settling Performing Defendants' Future Response Costs, and Natural Resource Damages at or in connection with the Site.
- b. Payment by Settling State Agencies to Settling Performing Defendants.
As soon as reasonably practicable after the Effective date, following the approval of the Maryland Board of Public Works and conditioned upon the availability of appropriated funds, the Settling State Agencies shall pay to the Trust \$1,400,972 to assist Settling Performing Defendants in conducting or financing Remedial Action and response actions for Natural Resource Damages at or in connection with the Site and in payment of Past and Future Response Costs, including Past and Future oversight costs, as provided in this Consent Decree.
- c. Interest. In the event that any payment required by Paragraphs 59.a and 59.b is not made within 120 days of the Effective Date, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 121st day after the Effective Date and accruing through the date of the payment.
- d. For both SFAs and SSAs, payments are to be made to the Trust by check or electronic funds transfer via the following:

Checks Mailed to:

UMB Bank, n.a.
PO Box 419226
Kansas City, MO 64141-6226
Attn: Matt Robinson

Checks Payable to:

68th Street Site RD/RA Environmental Remediation Trust

Wires Payable to:

Account: 68th Street RD/RA Environmental Remediation Trust
Account #: 9872292952
Routing #: 101000695

60. a. 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.

b. The Parties to this Consent Decree recognize and acknowledge that the obligations of each of the Settling State Agencies under this Consent Decree become binding and effective only after each such state agency has obtained the approval of the Maryland Board of Public Works. The payment obligations of each Settling State Agency may only be paid from funds that have been appropriated. If appropriated funds are not available to fulfill all of such agency's obligations, the agency shall seek additional funding as soon as possible, but no later than the subsequent annual budgetary process.

61. Payment Instructions for Settling Performing Defendants.

a. Instructions for Future Response Costs Payments and Stipulated Penalties.

All payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 61.a shall be made by Fedwire EFT to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

b. Instructions for All Payments. All payments made under this Paragraph 61 shall reference the CDCS Number, EPA Site/Spill ID Number 03GT and DOJ Case Number 90-

1-3-10830. At the time of any payment required to be made in accordance with this Paragraph 61, Settling Performing Defendants shall send notice that payment has been made to:

- (i) the United States, in accordance with Section XXVII (Notices and Submissions);
- (ii) EPA, in accordance with Section XXVII (Notices and Submissions);
- (iii) the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268; and
- (iv) Docket Clerk (3RC00), USEPA, 1650 Arch Street, Philadelphia, PA 19103.

Such notice shall also reference the CDCS Number, Site/Spill ID Number, and DOJ Case Number.

62. Settling Performing Defendants may contest any Future Response Costs billed under Paragraph 57 if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Performing Defendants shall pay all uncontested Future Response Costs to the United States within sixty (60) days of Settling Performing Defendants' receipt of the bill requiring payment. Simultaneously, Settling Performing Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Maryland and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Performing Defendants shall send to the United States, as provided in Section XXVII (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 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. Simultaneously with establishment of the escrow account, Settling Performing Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States prevails in the dispute, Settling Performing Defendants shall pay the sums due (with accrued interest) to the United States within fifteen (15) days of the resolution of the dispute. If Settling Performing Defendants prevail concerning any aspect of the contested costs, Settling Performing Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States within fifteen (15) days of the resolution of the dispute. Settling Performing Defendants shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with Paragraphs 61.a and 61.b (Payment Instructions). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Performing Defendants' obligation to reimburse the United States for its Future Response Costs.

63. Interest. In the event that any payment for Future Response Costs required under this Section is not made by the date required, Settling Performing Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Settling Performing Defendants' 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 Performing Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Section XXI.

XVII. PAYMENTS TO TRUSTEES FOR NATURAL RESOURCE DAMAGES AND PERFORMANCE OF NATURAL RESOURCE RESTORATION PROJECTS

64. As Settling Defendants' full contribution toward Natural Resource Damages, subject to Paragraphs 97 (Trustees' Reservations Regarding Natural Resource Damages) and 98 (General Reservations of Rights), Settling Performing Defendants shall:

- a. Submit payment in the amount of \$630,000 to the DOI NRDAR Fund for restoration of injured natural resources according to the following schedule:
 - (i.) One payment of \$315,000 to be paid within one year of the Effective Date,
 - (ii) One payment of \$315,000 to be paid within two years of the Effective Date.
- b. If MA-A is utilized for project purposes, the Settling Performing Defendants shall submit additional payments in an amount of up to \$82,170 to the DOI NRDAR Fund according to the following criteria:

The off-set for clearing and utilizing 9 acres within MA-A is a 39-acre reforestation requirement at Belt Woods, which would require an additional payment of \$82,170. If a smaller proportion of the available MA-A area is used for project purposes, then the pro-rated costs per acre impacted would be \$9,130 per acre.

Additional NRDA payments for MA-A impacts shall be made according to the following schedule:

- (i.) One payment of up to \$82,170 to be paid within one year of the date of notification of intent to utilize MA-A for project purposes.
- c. Perform all activities and fulfill obligations set forth in the Restoration Statement of Work, attached hereto as Appendix E. The Settling Performing Defendants are and shall remain solely responsible for compliance with all terms of this Consent Decree, including the restoration work described in Appendix E.

65. Dispute Resolution for Natural Resource Restoration Projects.

This Paragraph applies solely to disputes under this Section and Paragraph 80.b (Stipulated Penalties).

a. Informal Dispute Resolution. Any dispute under this Paragraph 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. This dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

b. Formal Dispute Resolution. In the event that the parties cannot resolve a dispute under this Paragraph by informal negotiations, then the formal dispute procedures outlined by this Paragraph 65.b. shall apply.

(1) The position advanced by Plaintiffs, after consulting with the Trustees, shall be considered binding unless, within 21 days after the conclusion of the informal negotiation period, Settling Performing Defendants invoke the formal dispute resolution procedures of this Section by serving on the Trustees 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 Settling Performing Defendants.

(2) Following receipt of Settling Performing Defendants' Statement of Position, Plaintiffs, after consulting with the Trustees, will issue an administrative decision resolving the dispute which shall include or attach any factual data, analysis, opinion, or documentation supporting the decision. Plaintiffs shall compile and maintain an administrative record of the dispute containing Settling Performing Defendants' Statement of Position and Plaintiffs' administrative decision. Plaintiffs' administrative decision shall be binding on Settling Performing Defendants unless, within 30 days after receipt of the administrative decision, Settling Performing Defendants file with the Court and serves on all Parties a motion for judicial review of the decision, based on the administrative record compiled and maintained by Plaintiffs pursuant to this Paragraph 65.b. Any such 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. Plaintiffs shall provide the Court a copy of the administrative record of the dispute, and may file a response to Settling Performing Defendants' motion.

c. Effect of Invoking Dispute Resolution. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Performing Defendants under this Consent Decree, not directly in dispute, unless Plaintiffs, after consulting with the Trustees, or the Court agree 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 78. 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 Settling Performing Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XVIII. INDEMNIFICATION AND INSURANCE

66. Settling Performing Defendants' Indemnification of the United States and the State.

a. Neither the United States nor the State assumes any liability by entering into this Consent Decree or by virtue of any designation of Settling Performing Defendants as EPA's or MDE's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Settling Performing Defendants shall indemnify, save and hold harmless the United States and the State and their 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 Performing 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 Performing Defendants as EPA's or the State's authorized representatives under Section 104(e) of CERCLA. Further, Settling Performing Defendants agree to pay the United States and the State all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Settling Performing 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 damage to the portion of I-95 that is within the Site and which is property of the State as a Settling Owner Defendant.. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Settling Performing Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Performing Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Settling Performing Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 66, and shall consult with Settling Performing Defendants prior to settling such claim.

67. Settling Performing Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Performing 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 Performing Defendants shall indemnify and hold harmless the United States and the State 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 Performing 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.

68. No later than fifteen (15) days before commencing any on-Site Work, Settling Performing Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 50.b of Section XIV (Certification of Completion) commercial general liability insurance with limits of 5 million dollars, for any one occurrence, and automobile liability insurance with limits of \$500,000, combined single limit, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Settling Performing Defendants pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, Settling Performing 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 Performing Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Performing Defendants shall provide to EPA and MDE certificates of such insurance and a copy of each insurance policy. Settling Performing Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Performing Defendants demonstrate by evidence satisfactory to EPA that any contractor

or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Performing Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

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

70. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by an event which Settling Performing Defendants consider to be a force majeure event, Settling Performing Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Site Cleanup Division, EPA Region III, within forty-eight (48) hours of when Settling Performing Defendants first knew that the event might cause a delay. Within five (5) days thereafter, Settling Performing Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Performing Defendants' rationale for attributing such delay to a force majeure if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Performing Defendants, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Settling Performing Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Settling Performing Defendants shall be deemed to know of any circumstance of which Settling Performing Defendants, any entity controlled by Settling Performing Defendants, or Settling Performing Defendants' contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Settling Performing Defendants from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 69 and whether Settling Performing Defendants have exercised their best efforts under Paragraph 69, EPA may, in its unreviewable discretion, excuse in writing Settling Performing Defendants' failure to submit timely notices under this Paragraph.

71. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations on an expedited basis. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other

obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Settling Performing Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Settling Performing Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

72. If Settling Performing Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Performing 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, 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 Performing Defendants complied with the requirements of Paragraphs 69 and 70. If Settling Performing Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Performing Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

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

74. Any dispute regarding 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 thirty (30) 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.

75. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within twenty (20) 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 Settling Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 76 or Paragraph 77.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, 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 EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 76 or 77. Within seven (7) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 76 or 77, the parties to the dispute

shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if 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 76 and 77.

76. Record Review. 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, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and 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.

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

b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 76.a. This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 76.c and 76.d.

c. Any administrative decision made by EPA pursuant to Paragraph 76.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and served on all Parties within fourteen (14) days of receipt of 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.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Hazardous Site Cleanup Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 76.a.

77. 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 75, the Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final decision resolving the dispute. The Hazardous Site Cleanup Division Director's decision shall be binding on Settling Defendants unless, within ten (10) days of receipt of the decision, 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 P (CERCLA Section 113(j) Record Review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

78. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 86. 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 Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

79. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 80 and 81 to the United States and the State (amounts received to be apportioned to the United States and the State on a 50%/50% basis) for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XIX (Force Majeure). "Compliance" by Settling Defendants shall include completion of all payments and activities required under this Consent Decree, or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, and any plans, reports, or other deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree. Stipulated penalties for failure to comply with requirements of this Consent Decree that apply only to Settling Performing Defendants shall be assessed only against Settling Performing Defendants, as listed in Appendix D.

80. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 1,000.00	1 st through 14 th day
\$2,000.00	15 th through 30 th day
\$3,000.00	31 st day and beyond

b. Failure to comply with requirements of Section VI (Performance of the Work by Settling Performing Defendants), Section VII (Remedy Review), Section VIII (Quality Assurance, Sampling, and Data Analysis), Section XI (EPA Approval of Plans and Other Submissions), Section XV (Emergency Response), Section XVI (Payments for Response and Assessment Costs) and Section XVII (Payments to Trustees for Natural Resource Damages and Performance of Restoration Projects).

81. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 750.00	1 st through 14 th day
\$ 1,500.00	15 th through 30 th day
\$ 3,000.00	31 st day and beyond

b. All requirements of this Consent Decree that are not identified in Paragraph 80.b of this Consent Decree.

82. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 99 (Work Takeover), Settling Performing Defendants shall be liable for a stipulated penalty in the amount of \$100,000.00. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 48 (Funding for Work Takeover) and 99 (Work Takeover).

83. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Performing Defendants of any deficiency; (b) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 76.b or 77.a of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

85. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of Settling Defendants' receipt from EPA or the Trustees of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Paragraphs 61.a and 61.b (Payment Instructions).

86. Penalties shall continue to accrue as provided in Paragraph 83 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA or the Trustees that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA or the Trustees within twenty (20) days of the agreement or the receipt of EPA's or the Trustees' decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA or the Trustees within sixty (60) days of receipt of the Court's decision or order, except as provided in Paragraph 86.c;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account within sixty (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 sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA, the Trustees, or to Settling Defendants to the extent that they prevail.

87. If Settling Defendants fail to pay stipulated penalties when due, Settling Defendants shall pay Interest on the unpaid stipulated penalties as follows: (a) if Settling Defendants have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 86 until the date of payment; and (b) if Settling Defendants fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 84 until the date of payment. If Settling Defendants fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

88. The payment of penalties and Interest, if any, shall not alter in any way Settling Performing Defendants' obligation to complete the performance of the Work required under this Consent Decree.

89. 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 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 Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

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

XXII. COVENANTS BY PLAINTIFFS

91. Covenants for Settling Defendants by United States and the State.

a. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under this Consent Decree, and except as specifically provided in Paragraphs 94, 95, 97, and 98, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Except with respect to future liability, as applied to the Settling Performing Defendants, these covenants shall take effect upon the Effective Date. With respect to future liability, as applied to Settling Performing Defendants, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50.b of Section XIV (Certification of Completion). With respect to present and future liability, these covenants not to sue shall take effect for each Settling Non-Performing Defendant upon the later of the Effective Date or that Settling Non-Performing Defendant's full payment to the Trust when due and as required by the Ancillary Agreements referred to in Paragraph 4 of this Consent Decree, including payments required under reopeners in said Ancillary Agreements, where applicable. All of the covenants addressed in this paragraph are conditioned upon the satisfactory performance by Settling Defendants of their respective obligations under this Consent Decree. These covenants extend only to Settling Defendants and do not extend to any other person.

b. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under this Consent Decree, and except as specifically provided in Paragraphs 94, 95, 97, and 98, the State covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, or equivalent Maryland statutory or common law, relating to the Site. Except with respect to future liability, as applied to the Settling Performing Defendants, these covenants shall take effect upon the Effective Date. With respect to future liability, as applied to Settling Performing Defendants, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 50.b of Section XIV (Certification of Completion). With respect to present and future liability, these covenants not to sue shall take effect for each Settling Non-Performing Defendant upon the later of the Effective Date or that Settling Non-Performing Defendant's full payment to the Trust when due and as required by the Ancillary Agreements referred to in Paragraph 4 of this Consent Decree, including payments required under reopeners in said Ancillary Agreements, where applicable. All of the covenants addressed in this paragraph are conditioned upon the satisfactory performance by Settling Defendants of their respective obligations under this Consent Decree. These covenants extend only to Settling Defendants and do not extend to any other person.

92. Covenants for Natural Resource Damages. In consideration of the actions performed and payments that will be made by Settling Defendants, Settling Federal Agencies, and Settling State Agencies under this Consent Decree, and except as specifically provided in Paragraphs 97 and 98 (Reservations by Trustees and General Reservations), the United States and the State covenant not to sue or to take administrative action against Settling Defendants, Settling Federal Agencies, or Settling State Agencies for Natural Resource Damages relating to the Site pursuant to Section 107(f) of CERCLA or Maryland statutory or common law. These covenants are conditioned upon the satisfactory performance by Settling Defendants, Settling Federal Agencies, and Settling State Agencies of their obligations under this Consent Decree. As to the Settling Non-Performing Defendants, these covenants not to sue shall take effect upon complete

payment by each Settling Non-Performing Defendant of its payments to the Trust required by the Ancillary Agreements referred to in Paragraph 4 of this Consent Decree. As to the Settling Federal Agencies, these covenants not to sue or take administrative action shall take effect upon complete payment by the United States on behalf of Settling Federal Agencies to the Trust required by Paragraph 59 of this Consent Decree. As to the Settling State Agencies, these covenants not to sue or take administrative action shall take effect upon complete payment by the State on behalf of Settling State Agencies to the Settling Performing Defendants required by Paragraph 59 of this Consent Decree. These covenants not to sue extend only to the Settling Defendants and to Settling Federal Agencies and Settling State Agencies and do not extend to any other person.

93. Covenant for Settling Federal Agencies and Settling State Agencies.

a. Covenant for Settling Federal Agencies. In consideration of the payments that will be made by the United States on behalf of Settling Federal Agencies under this Consent Decree, and except as specifically provided in Paragraphs 94, 95, 97, and 98, EPA and the State covenant not to sue or take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. Subject to the Reservations of Rights in this Consent Decree, EPA's and the State's covenant shall take effect upon the receipt by the Trust of the payments required by Paragraph 59 (Payments by Settling Federal Agencies) and any Interest due thereon under Paragraph 59. EPA's and the State's covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. EPA's and the State's covenant extends only to Settling Federal Agencies and does not extend to any other person.

b. Covenant for Settling State Agencies. In consideration of the payments that will be made by the State on behalf of Settling State Agencies under this Consent Decree, and except as specifically provided in Paragraphs, 94, 95, 97, and 98, the United States and the State covenant not to sue or take administrative action against Settling State Agencies pursuant to Sections 106 and 107(a) of CERCLA relating to the Site. This covenant shall take effect upon the receipt by the Trust of the payments required by Paragraph 59 (Payments by Settling State Agencies) and any Interest due thereon under Paragraph 59. This covenant is conditioned upon the satisfactory performance by Settling State Agencies of their obligations under this Consent Decree. This covenant extends only to Settling State Agencies and does not extend to any other person.

94. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order, seeking to compel Settling Performing Defendants to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) prior to Certification of Completion of the Remedial Action, (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

95. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action or to issue an administrative order, seeking to compel Settling Performing Defendants, and EPA reserves the

right to issue an administrative order seeking to compel Settling Federal Agencies, to perform further response actions relating to the Site and/or to pay the United States for additional costs of response if, (a) subsequent to Certification of Completion of the Remedial Action, (i) conditions at the Site, previously unknown to EPA, are discovered, or (ii) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that 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.

96. For purposes of Paragraph 94, the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 95, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and 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 EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

97. Trustees' Reservations Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the Trustees reserve the right to institute proceedings against Settling Performing Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on:

(1) conditions with respect to the Site, unknown to the Trustees as of the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources ("Unknown NRD Conditions"), or

(2) information received by the Trustees after the Date of Lodging of this Consent Decree which indicates that the releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of Natural Resources of a type or magnitude that was unknown to the Trustees as of the date of lodging of this Consent Decree ("New NRD Information"). For the purpose of this Paragraph, the information and conditions known to the Trustees shall include any information or conditions listed or identified in records relating to the Site that were in the possession or under the control of EPA, DOI, DOC, or MDNR as of the Date of Lodging of this Consent Decree.

98. General Reservations of Rights. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants, with respect to all matters not expressly included within Plaintiffs' covenants. EPA and the Federal Natural Resource Trustees and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies, with respect to all matters not expressly included within Plaintiffs' covenants. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling State Agencies, with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendants; EPA and the Federal Natural Resource Trustees and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies; and the United States reserves, and this Consent Decree is without prejudice to, all rights against Settling State Agencies, with respect to:

- a. claims based on a failure by Settling Defendants, Settling Federal Agencies, or Settling State Agencies to meet a requirement of this Consent Decree applicable to such party;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based on the ownership or operation of the Site by Settling Defendants, Settling Federal Agencies, or Settling State Agencies when such ownership or operation commences after signature of this Consent Decree;
- d. liability based on Settling Defendants', Settling Federal Agencies', or Settling State Agencies' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree;
- e. criminal liability;
- f. liability for violations of federal or state law which occur during or after implementation of the Work;
- g. liability of Settling Performing Defendants, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to Paragraph 14 (Modification of the Work); and
- h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry, the Department of Commerce, and the Department of the Interior regarding the Site (except with regard to the settlement of NRD claims).

99. Work Takeover.

- a. In the event EPA, after consultation with MDE, determines that Settling Performing Defendants have (1) ceased implementation of any portion of the Work, or (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Settling Performing Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Settling Performing Defendants a period of twenty (20) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.
- b. If, after expiration of the 20-day notice period specified in Paragraph 99.a, Settling Performing Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Settling Performing Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 99.b. Funding for Work Takeover costs is addressed under Paragraph 48.
- c. Settling Performing Defendants may invoke the procedures set forth in Section XX (Dispute Resolution), to dispute EPA's implementation of a Work Takeover under

Paragraph 99.b. However, notwithstanding Settling Performing Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 99.b until the earlier of (1) the date that Settling Performing Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Section XX (Dispute Resolution) requiring EPA to terminate such Work Takeover.

100. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

XXIII. COVENANTS BY SETTLING DEFENDANTS, SETTLING FEDERAL AGENCIES, AND SETTLING STATE AGENCIES

101. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 104, and in consideration of the payments that will be made by Settling Federal Agencies and Settling State Agencies under this Consent Decree, Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States (including Settling Federal Agencies) and the State (including Settling State Agencies) with respect to the Site and 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, 113 or any other provision of law;

b. any claims against the United States (including any department, agency or instrumentality of the United States or the State) under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Site and this Consent Decree; or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

102. Covenant by Settling Federal Agencies and Settling State Agencies. Settling Federal Agencies and Settling State Agencies agree not to assert 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, 113 or any other provision of law with respect to the Site and this Consent Decree.

103. Except as provided in Paragraph 106 (Claims Against Municipal Solid Waste Generators and Transporters), Paragraph 108 (Claims Against De Micromis Parties), Paragraph 110 (Claims Against *De Minimis* and Ability to Pay Parties) and Paragraph 116 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section XXII (Covenants by Plaintiffs), other than in Paragraphs 98.a (claims for failure to meet a requirement of the Decree), 98.e (criminal liability), and 98.f (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendants', Settling Federal Agencies', or Settling State Agencies' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

104. Settling Defendants reserve, 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, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, 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, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her 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.

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

106. Claims Against Municipal Solid Waste Generators and Transporters. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste (MSW) at the Site, if the volume of MSW disposed, treated or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

107. The waiver in Paragraph 106 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the criteria in Paragraph 106 if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines that: (a) the MSW contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. § 9604(e) or § 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927; or (c) the person impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

108. Claims Against De Micromis Parties. Settling Defendants agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

109. The waiver in Paragraph 108 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the criteria in Paragraph 108 if such person asserts a claim or cause of action relating to the Site against such Settling Defendant. This waiver also shall not apply to any claim or cause of action against any person meeting the criteria in Paragraph 108 if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or Natural Resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or Natural Resource restoration at the Site.

110. Claims Against *De Minimis* and Ability to Pay Parties. Settling Defendants agree not to assert any claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person that has entered or in the future enters into a final CERCLA Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

111. Settling Defendants agree not to seek judicial review of the final rule listing the Site on the NPL based on a claim that changed site conditions that resulted from the performance of the Work in any way affected the basis for listing the Site.

XXIV. EFFECT OF SETTLEMENT

112. Except as provided in Paragraph 106 (Claims Against MSW Generators and Transporters), Paragraph 108 (Claims Against *De Minimis* Parties), and Paragraph 110 (Claims Against *De Minimis*/Ability to Pay Parties), 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. Except as provided in Paragraph 106 (Claims Against MSW Generators and Transporters), Paragraph 108 (Claims Against *De Minimis* Parties), and Paragraph 110 (Claims Against *De Minimis*/Ability to Pay Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), 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. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

113. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Settling Defendant and each Settling Federal Agency and each Settling State Agency is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred and Natural Resource Damages, at or in connection with the Site,

by the United States, the State, or any other person, to include the Work, Past Response Costs, Future Oversight Costs, Future Response Costs, and Natural Resource Damages; provided, however, that if the United States exercises rights against Settling Defendants (or if EPA or the Federal Natural Resource Trustees or the State assert their rights against Settling Federal Agencies, or if the United States assert their rights against the Settling State Agencies) under the reservations in Section XXII (Covenants by Plaintiffs), other than in Paragraphs 98.a (claims for failure to meet a requirement of the Decree), 98.e (criminal liability), or 98.f (violations of federal/state law during or after implementation of the Work), the “matters addressed” in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation. Nothing contained herein shall prevent the Settling Defendants from enforcing private agreements among themselves relating to the Site, including, without limitation, the Ancillary Agreements.

114. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

115. Each Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States within ten (10) days of service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

116. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling 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 XXII (Covenants by Plaintiffs).

XXV. ACCESS TO INFORMATION

117. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Records”) 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 regarding the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

118. Business Confidential and Privileged Documents.

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

when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege, the work product doctrine or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing Records, they shall provide Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor.

c. No Records created or generated pursuant to the requirements of this Consent Decree shall be withheld from the United States or the State on the grounds that they are privileged or confidential.

119. No claim of confidentiality or privilege 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.

XXVI. RETENTION OF RECORDS

120. Until ten (10) years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 51.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

121. The United States acknowledges that, with respect to the Site, each Settling Federal Agency (a) is subject to all applicable Federal record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927. The State acknowledges that, with respect to the Site, each Settling State Agency (a) is subject to all applicable State and Federal

record retention laws, regulations, and policies; and (b) has certified that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

122. At the conclusion of this record retention period, Settling Defendants shall notify the United States and MDE at least ninety (90) days prior to the destruction of any such Records, and, upon request by the United States or MDE, Settling Defendants shall deliver any such Records to EPA and MDE. Settling Defendants may assert that certain Records are privileged under the attorney-client privilege, the work product doctrine or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by Settling Defendants. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. Settling Defendants shall retain all Records that they claim to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendants' favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

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

XXVII. NOTICES AND SUBMISSIONS

124. 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. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, Settling Federal Agencies, the State, the Settling State Agencies, and Settling Defendants, respectively. Notices required to be sent to EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice, the U.S. Fish and Wildlife Service, or NOAA. Notices required to be sent to the United States shall be sent to EPA and the U.S. Department of Justice, but shall only be sent to the U.S. Fish and Wildlife Service and NOAA if they involve Natural Resource Damages. Notices required to be sent to Plaintiffs shall be sent to EPA, the U.S. Department of Justice, and the State, but shall only be sent to the U.S. Fish and Wildlife Service, NOAA, and MDNR if they involve Natural Resource Damages.

As to the United States: Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-10830

and: Chief, Environmental Defense Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-6-19856

As to EPA: Director, Hazardous Site Cleanup Division (3HS00)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

and: Nick Tymchenko (3HS22)
EPA Project Coordinator
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to DOI and the United States Fish
And Wildlife Service: Mark Barash
United States Department of the Interior
Office of the Solicitor
15 State Street, 8th Floor
Boston, MA 02109-3502

Susan Lingenfelser
United States Fish and Wildlife Service
6669 Short Lane
Gloucester Courthouse, VA 23061
Facsimile: (804) 693 9032

As to NOAA:

Rich Takacs
NOAA Project Coordinator
NOAA Restoration Center
177 Admiral Cochrane Drive
Annapolis, MD 21401

Kate Barfield
Office of General Counsel
Natural Resources Section
1315 East-West Highway
SSMC3, Room 15107
Silver Spring, Maryland 20910-3282

As to MDNR:

Director, Chesapeake and Coastal Service
Maryland Department of Natural Resources
Suite E-2
580 Taylor Ave.
Annapolis, MD 21401

Principal Counsel, Office of the Attorney General
Maryland Department of Natural Resources
Suite C-4
580 Taylor Ave.
Annapolis, MD 21401

As to MDE:

Kim LeMaster
Project Coordinator 68th Street Dump
Maryland Department of the Environment
1800 Washington Blvd
Baltimore, MD 21230

As to the Settling State Agencies:

Christopher L. Fontaine
Assistant Attorney General
Maryland Department of Transportation
Office of General Counsel
7201 Corporate Center Drive
Hanover, MD 21076

As to Settling Performing

Defendants:

James R. Campbell, Ph.D., P.E.
Engineering Management, Inc.
Settling Defendants' Project Coordinator
1500 Ardmore Blvd., Suite 502
Pittsburgh, PA 15221-4468
Fax: (412)243-3704

As to Settling Non-Performing
Defendants:

See list in Appendix C

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

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

“Appendix A” is a map of the Site.

“Appendix B” is the ROD.

“Appendix C” is the complete list of Settling Non-Performing Defendants.

“Appendix D” is the complete list of Settling Performing Defendants.

“Appendix E” is the Restoration Statement of Work.

“Appendix F” is the Community Involvement Plan prepared jointly by the EPA and Settling Defendants as part of the Administrative Settlement Agreement and Order on Consent.

“Appendix G” is the I-95 Right-of-Way Access Requirements.

“Appendix H” is the Sample Form Letter of Credit

XXX. COMMUNITY RELATIONS

127. EPA will perform community relations activities in connection with the Site and this settlement. If requested by EPA or MDE, Settling Performing Defendants shall participate in community relations activities pursuant to the community relations plan (“Plan”) to be developed by EPA after consultation with MDE. EPA, in consultation with MDE, will determine the appropriate role for Settling Performing Defendants under the Plan. Settling Performing Defendants shall also cooperate with EPA and MDE in providing information regarding the Work to the public. As requested by EPA or MDE, Settling Performing 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 EPA or MDE to explain activities at or relating to the Site. Costs incurred by the United States or MDE under this Paragraph 127, including costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), shall be considered Future Response Costs that Settling Performing Defendants shall pay pursuant to Section XVI (Payments for Response and Assessment Costs).

XXXI. MODIFICATION

128. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of the EPA Project Coordinator and the Settling Performing Defendants. All such modifications shall be made in writing. Except as otherwise provided in this Paragraph 128, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the

United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Remedial Design Work Plan, Remedial Action Work Plan, and any other plan approved by EPA under this Consent Decree that do not materially alter the requirements of those documents may be made by written agreement between the EPA Project Coordinator, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Performing Defendants. Modifications to the Work made pursuant to Paragraph 14 (Modification of the Work) may be made by EPA. In addition, modifications to Section XVII (Payments to Trustees for Natural Resource Damages and Natural Resource Restoration Projects) shall require signature from authorized representatives of the Trustees.

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

XXXII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

130. Creation of 68th Street Dump Disbursement Special Account and Agreement to Disburse Funds to Settling Defendants. Within 30 days after the Effective Date, EPA shall establish the 68th Street Dump Disbursement Special Account and shall transfer \$1,000,000.00 from the 68th Street Dump Special Account to the 68th Street Dump Disbursement Special Account. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the 68th Street Dump Disbursement Special Account, including Interest Earned on the funds in the 68th Street Dump Disbursement Special Account, available for disbursement to the Trust as partial reimbursement for performance of the Work under this Consent Decree. EPA shall disburse funds from the 68th Street Dump Disbursement Special Account to Settling Defendants in accordance with the procedures and milestones for phased disbursement set forth in this Section.

131. Timing, Amount, and Method of Disbursing Funds From the 68th Street Dump Disbursement Special Account. Within 60 days of EPA's receipt of a Cost Summary and Certification, as defined by Paragraph 132.b, or if EPA has requested additional information under Paragraph 132.d or a revised Cost Summary and Certification under Paragraph 132.d within 60 days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the 68th Street Dump Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below:

<u>Milestone</u>	<u>Disbursement of Funds</u>
1. EPA approval of the Remedial Design Work Plan	\$350,000 from the 68 th Street Dump Disbursement Special Account
2. EPA approval of the Remedial Action Work Plan	\$ 350,000 from the 68 th Street Dump Disbursement Special Account
3. EPA Certification of Completion of the Remedial Action	Remainder of funds in the 68 th Street Dump Disbursement Special Account

- a. EPA shall disburse the funds from the 68th Street Dump Disbursement Special Account to the Trust by check or electronic funds transfer via the following:

Checks Mailed to:
UMB Bank, n.a.
PO Box 419226
Kansas City, MO 64141-6226
Attn: Matt Robinson

Checks Payable to:
68th Street Site RD/RA Environmental Remediation Trust

Wires Payable to:
Account: 68th Street RD/RA Environmental Remediation Trust
Account #: 9872292952
Routing #: 101000695

132. Requests for Disbursement of Special Account Funds.

a. Within 60 days of issuance of EPA's written confirmation that a milestone of the Work, as defined in Paragraph 131, has been satisfactorily completed, Settling Performing Defendants shall submit to EPA a Cost Summary and Certification, as defined in Paragraph 132.b, covering the Work performed pursuant to this Consent Decree up to the date of completion of that milestone. Settling Performing Defendants shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously sought or reimbursed pursuant to Paragraph 131.

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Settling Performing Defendants for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 133. Each Cost Summary and Certification shall contain the following statement signed by a responsible corporate official of a Settling Performing Defendant or Settling Performing Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation and review of Settling Performing Defendants' documentation of costs incurred and paid for Work performed pursuant to this Consent Decree [**insert, as appropriate:** "up to the date of completion of milestone 1," "between the date of completion of milestone 1 and the date of completion of milestone 2," "between the date of completion of milestone 2 and the date of completion of the milestone 3,"] 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 knowingly submitting false information, including the possibility of fine and imprisonment.

The responsible corporate official of a Settling Performing Defendant or Settling Performing Defendants' Project Coordinator shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Settling

Performing Defendants shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

d. If EPA finds that a Cost Summary and Certification includes a mathematical error, costs excluded under Paragraph 133, costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will notify Settling Performing Defendants and provide them an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Settling Performing Defendants fail to cure the deficiency within 30 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Settling Performing Defendants' costs eligible for disbursement for that submission and disburse the corrected amount to Settling Performing Defendants in accordance with the procedures in Paragraph 131 of this Section. Settling Performing Defendants may dispute EPA's recalculation under this Paragraph pursuant to Section XX (Dispute Resolution). In no event shall Settling Performing Defendants be disbursed funds from the 68th Street Dump Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

133. Costs Excluded from Disbursement. The following costs are excluded from, and shall not be sought by Settling Performing Defendants for, disbursement from the 68th Street Dump Disbursement Special Account: (a) response costs paid pursuant to Section XVI (Payments for Response and Assessment Costs); (b) any other payments made by Settling Performing Defendants to the United States pursuant to this Consent Decree, including, but not limited to, any interest or stipulated penalties paid pursuant to Section XXI (Stipulated Penalties); (c) attorneys' fees and costs, except for reasonable attorneys' fees and costs necessarily related to securing access and implementing Institutional Controls as required by Section IX (Access and Institutional Controls); (d) costs of any response activities Settling Performing Defendants perform that are not required under, or approved by EPA pursuant to, this Consent Decree; (e) costs related to Settling Performing Defendants' litigation, settlement, development of potential contribution claims, or identification of defendants; (f) internal costs of Settling Performing Defendants, including but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Settling Performing Defendants directly performing the Work; (g) any costs incurred by Settling Performing Defendants prior to the Effective Date; or (h) any costs incurred by Settling Performing Defendants pursuant to Section XX (Dispute Resolution).

134. Termination of Disbursements from the Special Account. EPA's obligation to disburse funds from the 68th Street Dump Disbursement Special Account under this Consent Decree shall terminate upon EPA's determination that Settling Performing Defendants: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 30 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by Paragraph 132 within 60 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of Settling Performing Defendants' failure to submit the Cost Summary and Certification as required by Paragraph 132. EPA's obligation to disburse funds from the 68th Street Dump Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 99,

when such assumption of performance of the Work is not challenged by Settling Performing Defendants or, if challenged, is upheld under Section XX (Dispute Resolution). Settling Performing Defendants may dispute EPA's termination of special account disbursements under Section XX (Dispute Resolution).

135. Recapture of Special Account Disbursements. Upon termination of disbursements from the 68th Street Dump Disbursement Special Account under Paragraph 134, if EPA has previously disbursed funds from the 68th Street Dump Disbursement Special Account for activities specifically related to the reason for termination (*e.g.*, discovery of a materially false or misleading submission after disbursement of funds based on that submission) EPA shall submit a bill to Settling Performing Defendants for those amounts already disbursed from the 68th Street Dump Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Settling Performing Defendants. Within 60 days of receipt of EPA's bill, Settling Performing Defendants shall reimburse the Hazardous Substance Superfund for the total amount billed. Payment shall be made in accordance with Paragraphs 61.a and 61.b. Upon receipt of payment, EPA may deposit all or any portion thereof in the 68th Street Dump Special Account, the 68th Street Dump Disbursement Special Account, or the Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Settling Performing Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. Settling Performing Defendants may dispute EPA's determination as to recapture of funds pursuant to Section XX (Dispute Resolution).

136. Balance of Special Account Funds. After EPA issues its written Certification of Completion of the Remedial Action pursuant to this Consent Decree, and after EPA completes all disbursement to Settling Performing Defendants in accordance with this Section, if any funds remain in the 68th Street Dump Disbursement Special Account, EPA may transfer such funds to the 68th Street Dump Special Account or to the Hazardous Substance Superfund. Any transfer of funds to the 68th Street Dump Special Account or the Hazardous Substance Superfund shall not be subject to challenge by Settling Performing Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

XXXIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

138. 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

139. Each undersigned representative of a Settling Defendant to this Consent Decree, the State, and the Assistant Attorney General for the Environment and Natural Resources

Division 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.

140. Each Settling Defendant 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 Settling Defendants in writing that it no longer supports entry of the Consent Decree.

141. 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 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. Settling Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXV. FINAL JUDGMENT

142. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

143. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and Settling Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 28th DAY OF November, 2017.



United States District Judge