

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
THE STATE OF NEW YORK,

Plaintiffs,

v.

OCCIDENTAL CHEMICAL CORPORATION;
OLIN CORPORATION; and CITY OF
NIAGARA FALLS, NEW YORK;
(102nd Street Landfill),

Defendants.

Civil Action No.
79-987C

CONSENT DECREE BETWEEN
THE UNITED STATES OF AMERICA,
THE STATE OF NEW YORK AND
OCCIDENTAL CHEMICAL CORPORATION
AND OLIN CORPORATION

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I. BACKGROUND

1 1. The United States of America, on behalf of the Administrator of the United
2 States Environmental Protection Agency (EPA), filed a Complaint in this matter on
3 December 20, 1979, against Occidental Chemical Corporation (OCC) and affiliated companies
4 and Olin Corporation (Olin) (collectively, the Companies), and later an Amended Complaint,
5 seeking, *inter alia*, injunctive relief and/or reimbursement of response costs under Section
6 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6973, Section

1 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 407, and Sections 309, 404 and 504
2 of the Clean Water Act, 33 U.S.C. §§ 1319, 1344 and 1364, and the common law of
3 nuisance, arising from the alleged disposal by OCC and Olin at the 102nd Street Landfill Site
4 (Site) of wastes from the production of chemicals and naming the City of Niagara Falls only
5 for purposes of access to City property abutting the landfill, so that the remedial action could
6 be fully carried out. The original Complaint and Amended Complaint also sought civil
7 penalties under the Clean Water Act. The United States sought leave to file a Second
8 Amended Complaint on December 9, 1986, adding claims pursuant to Sections 106 and 107
9 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA),
10 42 U.S.C. §§ 9606 and 9607, which statute was enacted subsequent to the commencement of
11 this action. OCC filed a cross-claim against the City of Niagara Falls. In negotiations
12 regarding the settlement of this action, the United States, on behalf of the federal Natural
13 Resource Trustees, has asserted potential Natural Resource Damages claims arising out of the
14 releases from the Site.

15 2. Upon motion by OCC, the State of New York was joined in this action pursuant
16 to Rule 19(a)(2)(ii) of the Federal Rules of Civil Procedure, and filed a Complaint in this
17 matter on November 18, 1980, asserting various statutory claims and common law claims of
18 public and private nuisance and restitution. The State sought injunctive relief, civil penalties
19 and compensation for damages for injury to the air, land and water resources of the State and
20 punitive damages, arising from the disposal by OCC and Olin at the Site of wastes from the
21 production of chemicals. The State sought leave to file a First Amended and Supplemental

1 Complaint on December 7, 1983, adding a claim under Section 107 of CERCLA, including
2 claims for Natural Resource Damages arising out of the releases from the Site.

3 3. In June 1980, the New York State Department of Environmental Conservation
4 (DEC) placed the Site on the New York State Registry of Inactive Hazardous Waste Disposal
5 Sites pursuant to Article 27, Title 13 of the Environmental Conservation Law.

6 4. In September 1983, EPA placed the Site on the National Priorities List,
7 40 C.F.R. Part 300, Appendix B (NPL), 48 Fed. Reg. 40658 (Sept. 8, 1983), pursuant to
8 Section 105 of CERCLA, 42 U.S.C. § 9605.

9 5. Pursuant to separate stipulations approved by the Court on June 26, 1984 and
10 May 16, 1989, OCC and Olin conducted both a remedial investigation and a feasibility study
11 related to the Site.

12 6. EPA, with the concurrence of the State, issued a Record of Decision (ROD) on
13 September 26, 1990, setting forth the selected remedial action for the Site. An Explanation of
14 Significant Differences was issued on September 30, 1993. This ROD was amended by EPA,
15 with the concurrence of the State, on June 9, 1995.

16 7. EPA, on September 30, 1991, issued a unilateral order pursuant to Section 106
17 of CERCLA, 42 U.S.C. § 9606, directing OCC and Olin to design and implement the Site
18 remedial action described in the ROD. *Administrative Order for Remedial Design and*
19 *Remedial Action, Index No. II-CERCLA 10223 (Order).*

20 8. Pursuant to the Order, OCC and Olin completed the Remedial Design Report,
21 and have also completed the Remedial Action Work Plan for the Site, which documents were
22 approved by EPA and the State on April 8, 1996 and September 24, 1997, respectively. The

1 Order controls the Remedial Action at the Site until such time as a Certification of Completion
2 of Remedial Action has been approved by EPA. OCC and Olin are presently implementing
3 the remedial action for the Site.

4 9. On June 7, 1996, EPA Region II accepted a proposal by the State dated April
5 22, 1996 (EPA/State Oversight Agreement) under which the State has supported EPA by
6 performing oversight of OCC's and Olin's ongoing implementation of the Remedial Action
7 at the Site pursuant to the Order.

8 10. As of the effective date of this Consent Decree (Decree), the United States'
9 Motion to Amend its Complaint (Item No. 93) is granted to the extent it exclusively states
10 claims under Sections 106 and 107 of CERCLA against OCC and Olin, and the State's Motion
11 to Amend its Complaint (Item No. 62) is granted to the extent it exclusively states claims
12 against OCC and Olin. All of the other claims in this action by the United States against OCC
13 and Olin and all claims in this action by the United States and the State of New York against
14 affiliated companies of OCC are hereby dismissed upon entry of this Consent Decree by the
15 Court.

16 11. The United States, the State, OCC and Olin agree, and this Court by entering
17 this Decree finds, that this Decree has been negotiated by the Parties in good faith; that
18 settlement of this matter will avoid prolonged and complicated litigation between the Parties;
19 and that this Decree is fair, reasonable, and in the public interest.

20 THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
21 ADJUDGED, AND DECREED:
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II. JURISDICTION

12. This Court has jurisdiction over the subject matter of this action and the parties to this Decree pursuant to 28 U.S.C. §§ 1331 and 1345, and Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607. The parties to this Decree waive all objections and defenses that they may have to this Court's jurisdiction to enter and enforce this Decree. Venue lies in this Court pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b).

III. PARTIES BOUND

13. This Decree is binding upon the United States, the State, and upon OCC and Olin and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of OCC and Olin under this Decree.

IV. DEFINITIONS

14. Unless otherwise expressly provided herein, terms used in this Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Decree or in any appendix attached hereto, the following definitions shall apply:

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

(b) "Certification of Completion of the Remedial Action" means the written demonstration and certification made by OCC and Olin to EPA pursuant to the Order that all

1 Remedial Action has been completed in accordance with the requirements of the Remedial
2 Design, the ROD, and the Order;

3 (c) "Complaints" means the Complaints filed by the United States and the
4 State in this matter as well as the United States' Second Amended Complaint and the State's
5 First Amended and Supplemental Complaint;

6 (d) "Consent Decree" or "Decree" shall mean this Consent Decree and any
7 attached appendices;

8 (e) "Day" shall mean a calendar day. In computing any period of time
9 under this Decree, where the last day would fall on a Saturday, Sunday, or federal holiday,
10 the period shall run until the close of business of the next working day;

11 (f) "DEC" shall mean the New York State Department of Environmental
12 Conservation;

13 (g) "DOI" shall mean the United States Department of Interior and any
14 successor departments, agencies or instrumentalities of the United States;

15 (h) "DOJ" shall mean the United States Department of Justice and any
16 successor departments, agencies or instrumentalities of the United States;

17 (i) "EPA" shall mean the United States Environmental Protection Agency
18 and any successor departments, agencies or instrumentalities of the United States;

19 (j) "Future Response Costs" shall mean all costs, including, but not limited
20 to, direct and indirect costs, that the United States or the State incurs or incurred after March
21 31, 1997, in reviewing or developing plans, reports and other items pursuant to the Order or
22 this Decree, verifying the O&M, or otherwise implementing, overseeing, or enforcing the

1 Order or this Decree, including, but not limited to, payroll costs, contractor costs, travel costs,
2 laboratory costs, the costs incurred pursuant to Sections VIII, XII (including, but not limited
3 to, the cost of attorney time and any monies paid to secure access and/or to secure or
4 implement institutional controls including, but not limited to, the amount of just
5 compensation), XV, and Paragraph 89 of Section XX; such costs, however, do not include
6 costs which are paid pursuant to the DEC Permit Monitor Program referenced in Paragraph
7 96(e);

8 (k) "Interest" shall mean interest at the current rate specified for interest on
9 investments of the Hazardous Substance Superfund established by the Internal Revenue Code,
10 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42
11 U.S.C. § 9607(a);

12 (l) "Matters addressed" in this Decree are the Remedial Action, Past
13 Response Costs, Future Response Costs, Natural Resource Damages, Mitigation Work, and
14 Operation and Maintenance; however, the "matters addressed" in this Decree do not include
15 those response costs or response actions as to which the United States and the State have
16 reserved their rights under this Decree, in the event that the United States or the State asserts
17 rights against OCC and Olin coming within the scope of such reservations;

18 (m) "Municipal Solid Waste" shall mean all waste materials generated by
19 households, including single and multi-family residences, and hotels and motels. The term
20 also includes waste materials generated by commercial, institutional, and industrial sources,
21 to the extent such wastes (A) are essentially the same as waste normally generated by
22 households, or (B) are collected and disposed of with other municipal solid waste or sewage

1 sludge as part of normal municipal solid waste collection services and, regardless of when
2 generated, would be considered conditionally exempt small quantity generator waste under
3 regulations issued pursuant to Section 3001(d)(4) of the Solid Waste Disposal Act (42 U.S.C.
4 6921(d)(4)). Examples of Municipal Solid Waste include food and yard waste, paper,
5 clothing, appliances, consumer product packaging, disposable diapers, office supplies,
6 cosmetics, glass and metal food containers, elementary or secondary school science laboratory
7 waste, and household hazardous waste. The term does not include combustion ash generated
8 by resource recovery facilities or municipal incinerators, or waste from manufacturing or
9 processing (including pollution control) operations not essentially the same as waste normally
10 generated by households.

11 (n) "NOAA" shall mean the National Oceanic and Atmospheric
12 Administration, an agency of the United States Department of Commerce, and any successor
13 departments, agencies or instrumentalities of the United States;

14 (o) "Natural Resource Damages" or "NRD" shall mean damages, including
15 costs of damages assessment, recoverable under Section 107 of CERCLA or any other
16 provisions of federal or state law, for injury to, destruction of, or loss of any and all natural
17 resources, for which the United States and the State are trustees, resulting from a release of
18 hazardous substances from the Site;

19 (p) "OCC" shall mean Occidental Chemical Corporation, its officers,
20 directors, employees, successors and assigns;

21 (q) "Olin" shall mean Olin Corporation, its officers, directors, employees,
22 successors, and assigns;

1 (r) "Operation and Maintenance" or "O&M" shall mean all activities
2 required to maintain the effectiveness of the Remedial Action as required under the Operation
3 and Maintenance Manual to be approved by EPA under the Order and such other requirements
4 pursuant to this Decree;

5 (s) "Order" shall mean the Administrative Order for Remedial Design and
6 Remedial Action, Index No. II CERCLA-10223, issued September 30, 1991, by EPA Region
7 II under which OCC and Olin have been and are now performing the Remedial Action at the
8 Site;

9 (t) "Paragraph" shall mean a portion of this Decree identified by an Arabic
10 numeral or an upper or lower case letter;

11 (u) "Parties" shall mean the United States, the State, OCC, and Olin;

12 (v) "Past Response Costs" shall mean all costs, including but not limited to
13 direct and indirect costs, that EPA or DOJ on behalf of EPA, and the State, have paid at or
14 in connection with the Site through March 31, 1997, plus accrued interest on all such costs
15 through such date. Past Response Costs shall not include those costs incurred by the State for
16 oversight of remedial construction, which are paid by OCC and Olin to an environmental
17 monitoring account established pursuant to RCRA permit No. 90-86-070;

18 (w) "Plaintiffs" shall mean the United States and the State as defined herein;

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

21 (y) "Record of Decision" or "ROD" shall mean the EPA Record of Decision
22 relating to the Site signed on September 26, 1990 by the Regional Administrator, EPA Region

1 II, amended on June 9, 1995, and as to which an Explanation of Significant Differences was
2 issued on September 30, 1993;

3 (z) "Remedial Action" means those activities, except for Operation and
4 Maintenance, which have been undertaken, or are to be undertaken, by OCC and Olin to
5 implement the ROD, in accordance with the final Remedial Design and Remedial Action Work
6 Plans and any other plans approved by EPA pursuant to the Order;

7 (aa) "Section" shall mean a portion of this Decree identified by a roman
8 numeral;

9 (bb) "Sewage Sludge" means solid, semi-solid, or liquid residue removed
10 during the treatment of municipal waste water, domestic sewage, or other waste water at or
11 by publicly owned or federally owned treatment works;

12 (cc) The "102nd Street Landfill" or "Site" means the area in the City of
13 Niagara Falls, New York, which encompasses the landfill located in the southeast corner of
14 the City of Niagara Falls consisting of a piece of property with a surface area of approximately
15 27 acres and designated by the following property description: bounded on the north by
16 Buffalo Avenue, on the east by undeveloped land, on the west by Griffon Park, and on the
17 south by the Niagara River. A map indicating the location of the 102nd Street Landfill is
18 attached hereto as Appendix A;

19 (dd) "State" shall mean the State of New York and all its departments,
20 agencies and instrumentalities, including, but not limited to, the New York State Department
21 of Environmental Conservation (DEC) and the New York State Department of Health;

1 (ee) "Trustees" means DOI, NOAA, and DEC, in their capacity as trustees
2 for natural resources;

3 (ff) "United States" shall mean the United States and all its departments,
4 agencies, and instrumentalities, including, but not limited to, EPA, DOJ and the Trustees;

5 (gg) "Waste Material" shall mean (1) any "hazardous substance" as defined
6 under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant
7 as defined under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste"
8 as determined under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any
9 "hazardous waste" as defined under 6 NYCRR Part 371; and

10 (hh) "Work" shall mean all activities OCC and Olin are required to perform
11 under this Decree or the Order, except those required by Section XXVII (Retention of
12 Records).

13 V. GENERAL PROVISIONS

14 15. Objectives of the Parties. The objectives of the Parties in entering into this
15 Decree are to protect human health, welfare and the environment at the Site by providing for
16 the implementation of post-remedial action Operation and Maintenance (O & M) at the Site
17 by OCC and Olin; to reimburse Past Response Costs; provide for the payment of Future
18 Response Costs; pay Natural Resource Damages; implement mitigation work; resolve the
19 claims of Plaintiffs against OCC and Olin as provided in this Decree; and release OCC and
20 Olin from the Order upon EPA's approval of the Certification of Completion of the Remedial
21 Action.

1 16. Commitments by OCC and Olin.

2 (a) OCC and Olin shall finance and perform the Site Operation and
3 Maintenance in accordance with this Decree and the O&M Manual and other plans, standards
4 and specifications developed by OCC and Olin and approved by EPA, or EPA and the State.
5 OCC and Olin shall also reimburse the United States and the State for Past Response Costs,
6 Future Response Costs and Natural Resource Damages as provided in this Decree.

7 (b) The obligations of OCC and Olin to finance and perform the Operation
8 and Maintenance and to pay amounts owed the United States and the State under this Decree
9 are joint and several. In the event of the insolvency or other failure of either of them to
10 implement the requirements of this Decree, the remaining party shall complete all such
11 requirements.

12 17. Compliance With Applicable Law. All activities undertaken by OCC and Olin
13 pursuant to this Decree shall be performed in accordance with the requirements of all
14 applicable federal and state laws and regulations. OCC and Olin must also comply with all
15 applicable or relevant and appropriate requirements of all federal and state environmental laws
16 as set forth in the ROD and O&M Manual. The activities conducted pursuant to this Decree,
17 if approved by EPA and the State, shall be considered to be consistent with the NCP.

18 18. Permits

19 (a) As provided in Section 121(e) of CERCLA and Section 300.400(e) of
20 the NCP, no permit shall be required for any portion of the Operation and Maintenance
21 conducted entirely on-site, i.e. within the areal extent of the presence of chemicals or in very
22 close proximity thereto and necessary for implementation of the O&M. Where any portion

1 of the O&M that is not on-site requires a federal or state permit or approval, OCC and Olin
2 shall submit timely and complete applications and take all other actions necessary to obtain all
3 such permits or approvals.

4 (b) OCC and Olin may seek relief under the provisions of Section XVI
5 (Force Majeure) of this Decree for any delay in the performance of the O&M resulting from
6 a failure to obtain, or a delay in obtaining, any permit required for the Operation and
7 Maintenance.

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

10 19. Notice to Successors-in-Title

11 (a) With respect to any property owned or controlled by either OCC or Olin
12 that is located within the Site, within 15 days after entry of this Decree, OCC and Olin shall
13 submit to EPA and the State for review and approval a notice to be filed with the Niagara
14 County Clerk's Office, Lockport, County of Niagara, State of New York, which shall provide
15 notices to all successors-in-title that the property is part of the Site, that EPA, with the
16 concurrence of the State, selected a remedy for the Site embodied in the Record of Decision,
17 and that OCC and Olin have implemented the remedy at the Site and have agreed to impose
18 use restrictions on the property. Such notice shall state that use of the property is restricted
19 to the extent that groundwater beneath the property shall not be extracted except as required
20 for the implementation and operation and maintenance of the remedy at the Site and that there
21 shall be no digging, excavation, construction, or other activities that could or would interfere
22 with, or adversely affect, the integrity of the landfill cap or any other engineering control

1 implemented as part of the remedial action at the Site. Such notice shall state that this Decree
2 is filed in the United States District Court for the Western District of New York and provide
3 the name and civil action number of this case, and the date this Decree was entered by the
4 Court. OCC and Olin shall record the notices within 10 days of EPA and the State's approval
5 of the notices. OCC and Olin shall provide EPA and the State with a certified copy of the
6 recorded notices within 10 days of recording.

7 (b) At least 30 days prior to the conveyance of any interest in property
8 located within the Site, including fee interests, leasehold interests, and mortgage interests, the
9 party conveying the interest shall give the grantee written notice of (i) this Decree, (ii) the use
10 restrictions imposed on the property, (iii) any instrument by which an interest in real property
11 has been conveyed that confers a right of access to the Site (hereinafter referred to as "access
12 easements") pursuant to Section XII (Access and Institutional Controls), and (iv) any
13 institutional controls in the form of restrictive easements that have been filed with respect to
14 the Site pursuant to Section XII (Access and Institutional Controls).

15 (c) At least 60 days prior to any such conveyance, the party conveying the
16 interest shall also give written notice to EPA and the State of the proposed conveyance,
17 including the name and address of the grantee, and the date on which notice of the Decree,
18 use restrictions, access easements, and/or restrictive easements was given to the grantee. If
19 EPA or the State request, the party seeking to convey the property interest shall execute and
20 record an easement in accordance with Paragraph 45(c), prior to the conveyance of any
21 property interest.

1 (d) In the event of any such conveyance, OCC's and Olin's obligations
2 under this Decree, including, but not limited to, their obligation to provide or secure access
3 and institutional controls, as well as to abide by such institutional controls, pursuant to Section
4 XII (Access and Institutional Controls) of the Decree, shall continue to be met by OCC and
5 Olin. In no event shall the conveyance release or otherwise affect the liability of OCC and
6 Olin to comply with all provisions of this Decree, absent the prior written consent of EPA and
7 the State. If the EPA and the State approve, the grantee may perform some or all of the O&M
8 under this Decree.

9 VI. CERTIFICATION OF COMPLETION OF THE REMEDIAL ACTION

10 20. Upon approval by EPA of OCC and Olin's Certification pursuant to the Order
11 that Remedial Action has been completed, the approved O&M Manual, which shall contain
12 the performance standards from the ROD, shall be deemed to be incorporated into and made
13 an enforceable part of this Decree. All performance standards in the ROD shall be enforceable
14 pursuant to this Decree, and the Order shall be deemed terminated and satisfied upon EPA's
15 approval of the Certification.

16 VII. OPERATION AND MAINTENANCE TO BE PERFORMED

17 21. Upon approval by EPA of the Certification of the Completion of the Remedial
18 Action under the Order, OCC and Olin shall implement the O&M in accordance with the
19 O&M Manual.

20 22. All aspects of the O&M to be performed by OCC and Olin pursuant to this
21 Decree shall be under the direction and supervision of the O&M Supervisor, the selection of

1 whom shall be subject to approval by the State. Unless they have already done so pursuant
2 to the Order, OCC and Olin shall, within 30 days of the approval by EPA of the Certification
3 of the Completion of the Remedial Action, notify the State in writing of the name, title, and
4 qualifications, including a curriculum vitae, of any O&M Supervisor proposed to be used in
5 carrying out work under this Decree. If at any time OCC and Olin propose to change the
6 O&M Supervisor, OCC and Olin shall give notice to the State and shall obtain approval from
7 the State before the new O&M Supervisor performs, directs or supervises any work under this
8 Decree.

9 23. The State will notify OCC and Olin in writing of its approval or disapproval
10 of their proposed O&M Supervisor. If the State disapproves of the selection of any individual
11 as O&M Supervisor, OCC and Olin shall submit to the State a list of alternate individuals that
12 would be acceptable to them as the O&M Supervisor, including the qualifications of each
13 individual, within 30 days of OCC's and Olin's receipt of the State's notice of disapproval.
14 The State will provide written notice of the names of the individual or individuals from the list
15 that it approves. OCC and Olin may select any approved individuals from the list and shall
16 notify the State of the name of the individual selected as the O&M Supervisor within 21 days
17 of the State's designation of approved individuals.

18 24. OCC and Olin shall, prior to any off-Site shipment of Waste Material from the
19 Site to an out-of-state waste management facility, provide written notification to the
20 appropriate state environmental official in the receiving facility's state and to the State and

1 EPA Project Coordinators of such shipment of Waste Material. However, this notification
2 requirement shall not apply to any off-Site shipments when the total volume of all such
3 shipments will not exceed 10 cubic yards.

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

11 (b) OCC and Olin shall provide the information required by Paragraph 24(a)
12 as soon as practicable after the award of the contract and before the Waste Material is actually
13 shipped.

14 VIII. REMEDY REVIEW

15 25. Periodic Review. After the Certification of the Completion of the Remedial
16 Action has been approved, OCC and Olin shall, as requested by EPA, after an opportunity for
17 review and comment by the State, conduct studies and investigations in order to permit EPA
18 to review whether the Remedial Action is protective of human health and the environment at
19 least every five years as required by Section 121(c) of CERCLA and any applicable
20 regulations. Unless EPA requests more, such studies and investigations shall be limited to the

1 collection and reporting of data and information from Site monitoring points established in the
2 Remedial Action.

3 26. EPA Selection of Further Response Actions. If EPA determines, at any time
4 after the Certification of the Completion of the Remedial Action has been approved, that the
5 Remedial Action is not protective of human health and the environment, EPA may, after an
6 opportunity for review and comment by the State, select further response actions for the Site
7 in accordance with the requirements of CERCLA and the NCP.

8 27. Opportunity To Comment. OCC and Olin and, if required by Sections
9 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment
10 on any further response actions proposed by EPA as a result of the review conducted pursuant
11 to Section 121(c) of CERCLA and to submit written comments for the record during the
12 comment period.

13 28. OCC's and Olin's Obligation To Perform Further Response Actions. After the
14 Certification of the Completion of the Remedial Action has been approved, if EPA selects
15 further response actions for the Site, OCC and Olin shall undertake such further response
16 actions to the extent that the reopener conditions in Paragraph 85 of Section XX (Covenants
17 Not to Sue by Plaintiffs) are satisfied. OCC and Olin may invoke the procedures set forth in
18 Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener
19 conditions of Paragraph 85 of Section XX (Covenants Not to Sue by Plaintiffs) are satisfied,
20 (2) EPA's determination that the Remedial Action is not protective of human health and the
21 environment, or (3) EPA's selection of the further response actions. Disputes pertaining to
22 whether the Remedial Action is protective or to EPA's selection of further response actions

1 shall be resolved pursuant to Paragraph 81 (record review). Disputes relating to whether the
2 reopener provisions are satisfied will be resolved by the Court under applicable law, after
3 informal dispute resolution under Paragraph 79.

4 29. Submissions of Plans. After the Certification of the Completion of the
5 Remedial Action has been approved, if OCC and Olin are required to perform further response
6 actions pursuant to Paragraph 28, they shall submit a plan for such work to EPA for approval,
7 in accordance with the procedures set forth in Section XI (EPA and State Review and
8 Approval of Submissions) and shall implement the plan approved by EPA, after opportunity
9 for review and comment by the State, in accordance with the provisions of this Decree.

10 30. State Remedy Review. Notwithstanding the above, OCC and Olin shall
11 conduct such further studies as may be required by the State, after an opportunity for review
12 and comment by EPA, in order to permit the State to make a determination whether the Site
13 remedy is protective of human health and the environment. EPA and the State will use best
14 efforts to coordinate on the scope and timing of their requirements for additional studies.

15 (a) In accordance with Section 114(a) of CERCLA, 42 U.S.C. § 9614(a),
16 if the State determines, based on information provided by OCC and Olin or on information
17 obtained from any other source, that the remedy is not protective of human health or the
18 environment, and that further response actions are required, it shall so notify EPA. If EPA
19 determines that the response actions required by the State would conflict with the Remedial
20 Action or Operation and Maintenance or conflict with, or significantly delay any further
21 response actions selected by EPA, it shall notify the State as expeditiously as possible under
22 the circumstances. Following such a notification from EPA, the State shall not direct OCC

1 and Olin to undertake further response actions pursuant to subparagraph (c) unless and until
2 the State invokes Dispute Resolution pursuant to subparagraph (b) and Section XIX and,
3 following such dispute resolution, the State's determination is sustained by EPA or the Court.

4 (b) In the event of such an EPA determination, the State may invoke Dispute
5 Resolution under Section XIX. In any such dispute, the only issues before EPA and the Court
6 shall be whether the response actions required by the State (i) would conflict with the Remedial
7 Action or Operation and Maintenance; or (ii) conflict with, or cause a significant delay in the
8 implementation of, any further response action selected by EPA.

9 (c) In the absence of such an EPA determination pursuant to subparagraph
10 (a) above, or if following dispute resolution pursuant to subparagraph (b) and Section XIX, the
11 State's determination is sustained by EPA or the Court, the State shall notify OCC and Olin that
12 further response actions are required. OCC and Olin shall undertake such further response
13 actions selected by the State to the extent that the reopener conditions in Paragraph 86 of Section
14 XX (Covenants Not to Sue by Plaintiffs) are satisfied. OCC and Olin may invoke the procedures
15 set forth in Section XIX (Dispute Resolution) to dispute (1) the State's determination that the
16 reopener conditions of Paragraph 86 are satisfied, (2) the State's determination that further
17 response actions are required to protect human health and the environment, or (3) the State's
18 selection of the further response actions. Disputes relating to whether the Remedial Action is
19 protective or to the State's selection of further response action shall be resolved pursuant to
20 Paragraph 81 (record review). Disputes relating to whether the reopener provisions are satisfied
21 will be resolved by the Court under applicable law, after informal dispute resolution under
22 Paragraph 79. OCC and Olin shall submit a plan for any such work required by this subparagraph

1 to the State for approval and OCC and Olin shall implement the approved plan as directed by the
2 State, after an opportunity for review and comment by EPA, subject only to the provisions of
3 subparagraph (d) below.

4 (d) In the event that the State amends the further response actions it has
5 selected pursuant to this Paragraph, in the process of resolving a dispute to which EPA is not a
6 party pursuant to subparagraph (c) above, EPA hereby reserves its right to make a determination
7 pursuant to subparagraph (a) with respect to any such amendment.

8 IX. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

9 31. In carrying out the O&M or any further response actions pursuant to Paragraphs
10 28 and 30, OCC and Olin shall use quality assurance, quality control, and chain of custody
11 procedures for all monitoring samples in accordance with "EPA Requirements for Quality
12 Assurance Project Plans for Environmental Data Operation" (EPA QAR-5 QAPP, October
13 1997), and subsequent amendments to such guidelines upon notification by EPA to OCC and
14 Olin of such amendment. Amended guidelines shall apply only to procedures conducted after
15 such notification. Prior to the commencement of any monitoring project under this Decree,
16 OCC and Olin shall submit to EPA and the State for approval a Quality Assurance Project
17 Plan (QAPP) that is consistent with the O&M Manual, the NCP and applicable guidance
18 documents. If relevant to the proceeding, the Parties agree that validated sampling data
19 generated in accordance with the QAPP(s) and reviewed and approved by EPA and the State
20 shall be admissible as evidence, without objection, in any proceeding under this Decree. OCC
21 and Olin shall ensure that EPA and State personnel and their authorized representatives are

1 allowed access at reasonable times to all laboratories utilized by OCC and Olin in
2 implementing this Decree. In addition, OCC and Olin shall ensure that such laboratories shall
3 analyze all samples submitted by EPA or the State pursuant to the QAPP for quality assurance
4 monitoring. OCC and Olin shall ensure that the laboratories they utilize for the analysis of
5 samples taken pursuant to this Decree perform all analyses according to accepted EPA and
6 State methods. Accepted EPA and State methods consist of those methods which are
7 documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the
8 "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and
9 any amendments made thereto during the course of the implementation of this Decree, or other
10 methods agreed to in writing by EPA and the State. OCC and Olin shall ensure that all
11 laboratories they use for analysis of samples taken pursuant to this Decree participate in an
12 EPA or EPA-equivalent QA/QC program. OCC and Olin shall ensure that all field
13 methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree
14 will be conducted in accordance with the procedures set forth in the QAPP approved by EPA
15 and the State.

16 32. In carrying out the O&M or any further response actions pursuant to Paragraphs
17 28 and 30, upon request, OCC and Olin shall allow split or duplicate samples to be taken by EPA
18 or the State or their authorized representatives. OCC and Olin shall notify EPA and the State not
19 less than 10 days in advance of any sample collection activity unless shorter notice is agreed
20 to by EPA or the State. In addition, EPA and the State shall have the right to take any
21 additional samples that EPA or the State deem necessary. Upon request, EPA and the State

1 shall allow OCC and Olin to take split or duplicate samples of any samples they take as part
2 of any remedy review or oversight of OCC's and Olin's implementation of the O&M.

3 33. Unless otherwise required by the O&M Manual or otherwise agreed to by EPA
4 and the State, OCC and Olin shall submit to EPA and the State two copies of the results of the
5 sampling and/or tests or other data obtained or generated by or on behalf of OCC and Olin
6 with respect to the O&M and/or the implementation of this Decree.

7 34. Notwithstanding any provision of this Decree, the United States and the State
8 hereby retain all of their information gathering and inspection authorities and rights, including
9 enforcement actions related solely to such information gathering and inspection authorities and
10 rights, under CERCLA and any other applicable statutes or regulations.

11 X. REPORTING REQUIREMENTS

12 35. After the Certification of the Completion of the Remedial Action has been
13 approved, in addition to any other requirements of this Decree, including any requirements
14 set forth in the O&M Manual, OCC and Olin shall submit to EPA and the State five copies
15 each of an annual report for the Site, outlining the activities performed at the Site, including
16 site monitoring. The report shall describe, among other matters, the overall effectiveness of
17 the Remedial Action in achieving remedial action objectives, including the operation of the
18 leachate collection system and the maintenance of gradients. OCC and Olin shall make these
19 reports by June 1 of every year.

20 36. Upon the occurrence of any event during the performance of the O&M that
21 OCC and Olin are required to report pursuant to Section 103 of CERCLA or Section 304 of

1 the Emergency Planning and Community Right-to-Know Act (EPCRA), OCC and Olin shall
2 within 24 hours of the onset of such event orally notify the EPA and the State Project
3 Coordinators or the Alternate EPA and State Project Coordinators (in the event of the
4 unavailability of the Project Coordinator), or, in the event that neither the Project Coordinator
5 or Alternate Project Coordinator is available, the Chief, Response and Prevention Branch, Region
6 II, United States Environmental Protection Agency and the DEC Region 9, Regional Director,
7 New York State Department of Environmental Conservation. These reporting requirements
8 are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

9 37. Within 20 days of the onset of such an event, OCC and Olin shall furnish to
10 EPA and the State a written report, signed by OCC's and Olin's Project Coordinator, setting
11 forth the events which occurred and the measures taken, and to be taken, in response thereto.
12 Within 30 days of the conclusion of such an event, OCC and Olin shall submit a report setting
13 forth all actions taken in response thereto.

14 38. All reports and other documents submitted by OCC and Olin to EPA and the
15 State (other than the annual reports referred to above) which purport to document OCC's and
16 Olin's compliance with the terms of this Consent Decree shall be signed by an authorized
17 representative of OCC and Olin.

18 XI. EPA AND STATE REVIEW AND APPROVAL OF SUBMISSIONS

19 39. After review of any plan, report or other item which is required to be submitted
20 for approval pursuant to this Decree, EPA, after an opportunity for review and comment by
21 the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission

1 upon specified conditions; (c) modify the submission to cure any deficiencies; (d) disapprove,
2 in whole or in part, the submission, directing that OCC and Olin modify the submission; or
3 (e) any combination of the above. However, EPA shall not modify a submission without first
4 providing OCC and Olin at least one notice of deficiency and an opportunity to cure within
5 28 days, except where to do so would cause serious disruption to the O&M.

6 40. In the event of approval, approval upon conditions or modification by EPA,
7 after an opportunity for review and comment by the State, pursuant to Paragraph 39(a), (b),
8 or (c), OCC and Olin shall proceed to take any action required by the plan, report, or other
9 item, as approved or modified by EPA, subject only to OCC's and Olin's right to invoke the
10 Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to
11 the modifications or conditions made by EPA. In the event that EPA modifies the submission
12 to cure the deficiencies pursuant to Paragraph 39(c) and the submission was materially non-
13 responsive, EPA and the State retain their rights to seek stipulated penalties, as provided in
14 Section XVIII (Stipulated Penalties).

15 41. (a) Upon receipt of a notice of disapproval pursuant to Paragraph 39(d),
16 OCC and Olin shall, within 28 days or such longer time as specified by EPA in such notice,
17 correct the deficiencies and resubmit the plan, report, or other item for approval. Any
18 stipulated penalties applicable to the submission, as provided in Section XVIII, shall accrue
19 during the 28-day period or otherwise specified period but shall not be payable unless the
20 resubmission is disapproved or modified due to a material defect as provided in Paragraphs
21 42 and 43.

1 (b) Notwithstanding the receipt of a notice of disapproval pursuant to
2 Paragraph 39(d), OCC and Olin shall proceed at the direction of EPA to take any action
3 required by any non-deficient portion of the submission. Implementation of any non-deficient
4 portion of a submission shall not relieve OCC and Olin of any liability for stipulated penalties
5 under Section XVIII (Stipulated Penalties).

6 42. In the event that a resubmitted plan, report or other item, or portion thereof,
7 is disapproved by EPA, after an opportunity for review and comment by the State, EPA or
8 the State, as appropriate, may again require OCC and Olin to correct the deficiencies, in
9 accordance with the preceding Paragraphs. EPA, after an opportunity for review and
10 comment by the State, also retains the right to modify or develop the plan, report or other
11 item. OCC and Olin shall implement any such plan, report, or item as modified or developed
12 by EPA, after an opportunity for review and comment by the State, subject only to their right
13 to invoke the procedures set forth in Section XIX (Dispute Resolution).

14 43. If upon resubmission, a plan, report, or item is disapproved or modified by
15 EPA due to a material defect, OCC and Olin shall be deemed to have failed to submit such
16 plan, report, or item timely and adequately unless OCC and Olin invoke the dispute resolution
17 procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned
18 pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section
19 XVIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and
20 payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or
21 modification is upheld, stipulated penalties shall accrue for such violation from the date on
22 which the initial submission was originally required, as provided in Section XVIII.

1 44. (a) All plans, reports, and other items required to be submitted to EPA
2 and/or the State under this Decree shall, upon approval or modification by EPA and/or the
3 State, be enforceable under this Decree. In the event EPA and/or the State approve or modify
4 a portion of a plan, report, or other item required to be submitted to EPA and/or the State
5 under this Decree, the approved or modified portion shall be enforceable under this Decree.

6 (b) As used in this Section XI, the term "EPA, after an opportunity for
7 review and comment by the State," for purposes of the State's review of submissions pursuant
8 to Paragraph 30, Subparagraphs 96(b) and 96(c), and subject to EPA's reservation of rights
9 pursuant to Subparagraphs 30(a), 30(d), and 96(d), shall mean "the State, after an opportunity
10 for review and comment by EPA."

11 XII. ACCESS AND INSTITUTIONAL CONTROLS

12 45. If the Site, or any other property where access and/or use restrictions are
13 needed to implement this Decree, is owned or controlled by either OCC or Olin, OCC or Olin
14 shall:

15 (a) Commencing on the date that the Certification of
16 Completion of the Remedial Action is approved, provide the United
17 States, the State, and their representatives, including EPA and its
18 contractors, with access at all reasonable times to the Site, or such other
19 property, for the purpose of conducting any activity related to this
20 Decree including, but not limited to, the following activities:

- 21 i. Monitoring the O&M;
- 22 ii. Verifying any data or information submitted to the
23 United States or the State;
- 24 iii. Conducting investigations relating to contamination
25 at or near the Site;

- 1 iv. Obtaining samples;
- 2 v. Assessing the need for, planning, or implementing
3 additional response actions at or near the Site;
- 4 vi. Implementing the O&M pursuant to the conditions
5 set forth in Paragraph 89 of this Decree;
- 6 vii. Inspecting and copying records, operating logs,
7 contracts, or other documents maintained or
8 generated by OCC and Olin or their agents,
9 consistent with Sections XII and XXVI;
- 10 viii. Assessing OCC's and Olin's compliance with the
11 requirements of this Decree; and
- 12 ix. Determining whether the Site or other property is
13 being used in a manner that is prohibited or
14 restricted, or that may need to be prohibited or
15 restricted, by this Decree or by any restrictive
16 easements filed pursuant to this Decree.

17 (b) Commencing on the date of lodging of this Decree,
18 refrain from using the Site, or such other property, in any manner that
19 would interfere with or adversely affect the integrity or protectiveness
20 of the remedial measures and O&M implemented and to be
21 implemented pursuant to this Decree. Such restrictions include, but are
22 not limited to, the prohibition of extraction of groundwater at the Site
23 for any purpose other than to implement the remedial measures and
24 O&M pursuant to this Decree and the prohibition of digging,
25 excavation, construction, or other activities that could or would
26 interfere with, or adversely affect, the integrity of the landfill cap or
27 any other engineering control implemented as part of the remedial
28 action at the Site, as well as any other restrictions set forth in the O&M
29 Manual; and

30 (c) If EPA or the State requests, execute and record in the
31 Niagara County Clerk's Office, Lockport, County of Niagara, State of
32 New York, easements, running with the land, that (i) grant a right of
33 access for the purpose of conducting any activity related to this Decree
34 including, but not limited to, those activities listed in Paragraph 45(a)
35 of this Decree, and (ii) grant the right to enforce the use restrictions
36 listed in Paragraph 45(b) of this Decree, or that are otherwise necessary

1 to implement, ensure non-interference with, or ensure the
2 protectiveness of the remedial measures and O&M to be performed
3 pursuant to this Decree. OCC and Olin shall grant the access rights and
4 the rights to enforce the use restrictions to one or more of the following
5 persons, as determined by EPA and the State: (i) the United States, on
6 behalf of EPA, and its representatives, (ii) the State and its
7 representatives, (iii) OCC and Olin and their representatives; and/or
8 (iv) other appropriate grantees. OCC and Olin shall, within 45 days of
9 such request, submit to EPA and the State for review and approval with
10 respect to such property:

- 11 i. Draft easements that are enforceable under the laws
12 of the State of New York, free and clear of all prior
13 liens and encumbrances (except as approved by EPA
14 and the State) and acceptable under the Attorney
15 General's Title Regulations promulgated pursuant to
16 40 U.S.C. § 255; and
- 17 ii. A current title commitment or report prepared in
18 accordance with the U.S. Department of Justice
19 *Standards for the Preparation of Title Evidence in*
20 *Land Acquisitions by the United States* (1970) (the
21 Standards).

22 Within 15 days of EPA and/or the State's approval and acceptance of
23 the easements, OCC and Olin shall update the title search and, if it is
24 determined that nothing has occurred since the effective date of the
25 commitment or report to affect the title adversely, record the easements
26 with the Niagara County Clerk's Office. Within 30 days of recording
27 the easements, OCC and Olin shall provide EPA and the State with
28 final title evidence acceptable under the Standards, and a certified copy
29 of the original recorded easements showing the clerk's recording
30 stamps.

31
32 46. If the Site, or any other property where access and/or use restrictions are
33 needed to implement this Decree, is owned or controlled by persons other than either OCC
34 or Olin, OCC and Olin shall use best efforts to secure from such persons:

- 35 (a) An agreement to provide access thereto for OCC and Olin, as
36 well as for the United States on behalf of EPA, and/or the State, as requested,

1 as well as their representatives (including contractors), for the purpose of
2 conducting any activity related to this Decree including, but not limited to,
3 those activities listed in Paragraph 45(a) of this Decree;

4 (b) An agreement, enforceable by OCC and Olin and the United
5 States and/or the State, to abide by the obligations and restrictions established
6 in Paragraph 45(b) of this Decree, or that are otherwise necessary to
7 implement, ensure non-interference with, or ensure the protectiveness of the
8 remedial measures and O&M to be performed pursuant to this Decree; and

9 (c) If EPA or the State so request, the execution and recordation in
10 the Niagara County Clerk's Office of easements, running with the land, that (i)
11 grant a right of access for the purpose of conducting any activity related to this
12 Decree including, but not limited to, those activities listed in Paragraph 45(a)
13 of this Decree, and (ii) grant the right to enforce the use restrictions listed in
14 Paragraph 45(b) of this Decree, or that are otherwise necessary to implement,
15 ensure non-interference with, or ensure the protectiveness of the remedial
16 measures and O&M to be performed pursuant to this Decree. The access rights
17 and/or the rights to enforce the use restrictions shall be granted to one or more
18 of the following persons, as determined by EPA and/or the State: (i) the United
19 States, on behalf of EPA, and its representatives, and/or (ii) the State and its
20 representatives, (iii) OCC and Olin and their representatives, and/or (iv) other
21 appropriate grantees. OCC and Olin shall, within 45 days of such request,
22 submit to EPA and the State for review and approval with respect to such
23 property:

24 i. Draft easements that are enforceable under the laws
25 of the State of New York , free and clear of all prior
26 liens and encumbrances (except as provided by EPA
27 and the State), and acceptable under the Attorney
28 General's Title Regulations promulgated pursuant to
29 40 U.S.C. § 255; and

30 ii. A current title commitment or report prepared in
31 accordance with the Standards.

32 Within 15 days of EPA and/or the State's approval and acceptance of
33 the easements, OCC and Olin shall update the title search and, if it is
34 determined that nothing has occurred since the effective date of the
35 commitment or report to affect the title adversely, record the easements

1 with the Niagara County Clerk's Office. Within 30 days of the
2 recording of the easements, OCC and Olin shall provide EPA and the
3 State with final title evidence acceptable under the Standards, and a
4 certified copy of the original recorded easements showing the clerk's
5 recording stamps.
6

7 47. For purposes of Paragraph 46 of this Decree, "best efforts" includes the
8 payment of reasonable sums of money in consideration of access, access easements, use
9 restrictions, and/or restrictive easements. If any access or use restriction agreements required
10 by Paragraphs 46(a) or 46(b) of this Decree are not obtained within 45 days of the date of
11 entry of this Decree, or any access easements or restrictive easements required by Paragraph
12 46(c) of this Decree are not submitted to EPA and/or the State, as per their requests, in draft
13 form within 45 days of the date of EPA or the State's request, OCC and Olin shall promptly
14 notify the EPA and/or the State in writing, and shall include in that notification a summary
15 of the steps that OCC and Olin have taken to attempt to comply with Paragraph 46 of this
16 Decree. EPA or the State may, as they deem appropriate, assist OCC and Olin in obtaining
17 access or use restrictions, either in the form of contractual agreements or in the form of
18 easements running with the land. OCC and Olin shall reimburse the United States and/or the
19 State in accordance with the procedures in Section XXIII (Payment of Future Response Costs
20 and State Oversight of Site Remedy), for all costs incurred by the United States or the State
21 in obtaining such access and/or use restrictions including, but not limited to, the cost of
22 attorney time and the amount of monetary consideration paid.

23 48. If EPA and/or the State determine that use restrictions in the form of state or
24 local laws, regulations, ordinances or other governmental controls are needed to implement
25 the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure

1 non-interference therewith, OCC and Olin shall cooperate with EPA's and/or the State's
2 efforts to secure such governmental controls.

3 49. Notwithstanding any provision of this Decree, the United States and the State
4 retain all of their access authorities and rights, including enforcement authorities related to
5 such access authorities and rights, under CERCLA, and any other applicable statute or
6 regulations.

7 **XIII. PROJECT MANAGERS AND NOTIFICATIONS**

8 50. (a): EPA has designated the following individual as its Remedial Project
9 Manager for the Site:

10 Paul J. Olivo
11 New York Remediation Branch
12 Emergency and Remedial Response Division
13 U.S. Environmental Protection Agency
14 290 Broadway
15 New York, NY 10007-1866
16 (212) 637-4280
17

18 (b): DEC has designated the following individual as its Remedial Project
19 Manager (102nd Street Project Manager," or "Project Manager") for the Site:

20 Daniel King, P.E.
21 Region 9 Office
22 New York State Department of Environmental Conservation
23 270 Michigan Avenue
24 Buffalo, NY 14203-2999
25 (716) 851-7220
26

27 51. EPA and the State have the right to change their respective Remedial Project
28 Managers. If EPA or the State changes its Remedial Project Manager, EPA or the State will

1 inform the other governmental party, OCC and Olin in writing of the name, address, and
2 telephone number of the new Remedial Project Manager.

3 52. EPA's Remedial Project Manager shall have the authority lawfully vested in a
4 Remedial Project Manager and On-Scene Coordinator by the NCP, 40 C.F.R. Part 300.
5 EPA's Remedial Project Manager shall have authority, consistent with the NCP, to halt any
6 work required by this Decree, and to take any necessary response action.

7 53. Within ten (10) days after the effective date of this Decree, OCC and Olin shall
8 each designate a Project Coordinator and shall submit the name, address, and telephone
9 number of the Project Coordinators to EPA and the State for review and approval, unless such
10 OCC and Olin Project Coordinators are to remain the same as those designated under the
11 Order. OCC's and Olin's Project Coordinators shall be responsible for overseeing OCC's and
12 Olin's implementation of this Decree. If OCC and Olin wish to change their Project
13 Coordinators, OCC and Olin shall provide written notice to EPA and the State, five (5) days
14 prior to changing the Project Coordinators, of the name and qualifications of the new Project
15 Coordinators for review and approval.

16 54. Whenever under the terms of this Decree, written notice is required to be given
17 to EPA and/or the State, a report or other document is required to be submitted to EPA and/or
18 the State, or any other written communication is required to be made to EPA and/or the State,
19 such correspondence shall be directed to the following individuals at the addresses and in the
20 quantities specified below unless those individuals or their successors give notice of a change
21 to OCC and Olin in writing:

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4 copies: Chief, New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, NY 10007-1866
Attention: 102nd Street Landfill Superfund Site Project Manager

1 copy: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, NY 10007-1866
Attention: 102nd Street Landfill Superfund Site Attorney

2 copies: Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
Room 260B
50 Wolf Road
Albany, NY 12233-7010

3 copies: Director, Region 9
New York State Department of Environmental Conservation
270 Michigan Avenue
Buffalo, NY 14203 - 2999
Attention: 102nd Street Landfill Project Manager

1 copy: Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, NY 12203
Attention: 102nd Street Landfill Project Coordinator

1 copy: New York State Department of Law
Environmental Protection Bureau
120 Broadway
New York, NY 10271
Attention: Norman Spiegel, Assistant Attorney General

38 55. In addition, when submitting to the State any written communication with
39 respect to a matter within the State's responsibilities pursuant to Paragraph 96, OCC and Olin
40 shall simultaneously submit copies of that communication to EPA. OCC and Olin shall submit

1 copies of the communication to the following individuals at the addresses and in the quantities
2 specified below unless those individuals or their successors give notice of a change to OCC
3 and Olin in writing:

4 1 copy: Chief, New York Remediation Branch
5 Emergency and Remedial Response Division
6 U.S. Environmental Protection Agency, Region II
7 290 Broadway
8 New York, NY 10007-1866
9 Attention: 102nd Street Landfill Superfund Site Project Manager

10
11 1 copy: Chief, New York/Caribbean Superfund Branch
12 Office of Regional Counsel
13 U.S. Environmental Protection Agency, Region II
14 290 Broadway
15 New York, NY 10007-1866
16

17 XIV. ASSURANCE OF ABILITY TO COMPLETE WORK

18 56. Within 30 days of entry of this Decree, OCC and Olin shall establish and
19 maintain financial security in the amount of \$1,000,000 by demonstrating that OCC or Olin
20 satisfy the requirement of 40 C.F.R. Section 264.143(f).

21 57. OCC and Olin, or either of them, shall demonstrate their ability to complete
22 the O&M by means of the financial test or the corporate guarantee pursuant to Paragraph 56
23 by submitting sworn statements conveying the information required by 40 C.F.R. Section
24 264.143(f) annually, on the anniversary of the effective date of this Decree. In the event that
25 EPA or the State determine at any time that the financial assurances provided pursuant to this
26 Section are inadequate, OCC and Olin, or either of them, shall, within 30 days of receipt of
27 notice of EPA or the State's determination, obtain and present to EPA and the State another
28 form of financial assurance acceptable to EPA and the State that meets the requirements for

1 such assurance in effect at the time such change is requested. OCC's or Olin's inability to
2 demonstrate financial ability to perform the O&M shall not excuse performance of any
3 activities required under this Decree.

4 58. If OCC and Olin can show that the estimated cost to perform the O&M has
5 diminished below the amount set forth in Paragraph 56 above after entry of this Decree, OCC
6 and Olin may, on any anniversary date of entry of this Decree, or at any other time agreed to
7 by the Parties, reduce the amount of the financial security provided under this Section to the
8 estimated cost of the remaining work to be performed. OCC and Olin shall submit a proposal
9 for such reduction to EPA and the State, in accordance with the requirements of this Section,
10 and may reduce the amount of the security upon approval by EPA and the State. In the event
11 of a dispute, OCC and Olin may reduce the amount of the security in accordance with the final
12 administrative or judicial decision resolving the dispute.

13 59. OCC and Olin may change the form of financial assurance provided under this
14 Section at any time, upon notice to and approval by EPA and the State, provided that the new
15 form of assurance meets the requirements for such assurances in effect at the time such change
16 is requested. In the event of a dispute, OCC and Olin may change the form of the financial
17 assurance only in accordance with the final administrative or judicial decision resolving the
18 dispute.

19 XV. EMERGENCY RESPONSE

20 60. In the event of any action or occurrence during the performance of the O&M
21 which causes or threatens a release of Waste Material from the Site that constitutes an

1 emergency situation or may present an immediate threat to human health or welfare or the
2 environment, OCC and Olin shall, subject to Paragraph 61, immediately take all appropriate
3 action to prevent, abate, or minimize such release or threat of release, and shall immediately
4 notify the EPA's and the State's Project Managers, or, if the Project Managers are
5 unavailable, their Alternate Project Managers. If neither of these persons is available, OCC
6 and Olin shall notify the Chief, Response and Prevention Branch, EPA Region II at 732-548-
7 8730 and the DEC Director of Environmental Remediation. OCC and Olin shall take such
8 actions in consultation with EPA and the State's Project Managers or other available
9 authorized EPA and State officers and in accordance with all applicable provisions of the
10 O&M Manual, any Contingency Plans, and any other applicable plans or documents approved
11 by EPA and/or the State. In the event that OCC and Olin fail to take appropriate response
12 action as required by this Section, EPA or the State may take such action instead. Pursuant
13 to Section XXIII, OCC and Olin shall reimburse EPA and the State for all costs of the
14 response action not inconsistent with the NCP.

15 61. Nothing in the preceding Paragraph or in this Decree shall be deemed to limit
16 any authority of the United States or the State (a) to take all appropriate action to protect
17 human health and the environment or to prevent, abate, respond to, or minimize an actual or
18 threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such
19 appropriate action, or seek an order from the Court requiring such action, to protect human
20 health and the environment or to prevent, abate, respond to, or minimize an actual or
21 threatened release of Waste Material on, at, or from the Site, subject to Section XX
22 (Covenants Not to Sue by Plaintiffs).

XVI. FORCE MAJEURE

1
2 62. "Force majeure," for purposes of this Decree, is defined as any event arising
3 from causes beyond the control of OCC and Olin, of any entity controlled by OCC and Olin,
4 or of OCC's and Olin's contractors, that delays or prevents the performance of any O&M
5 obligation under this Decree despite OCC's and Olin's best efforts to fulfill the obligation.
6 The requirement that OCC and Olin exercise "best efforts to fulfill the obligation" includes
7 using best efforts to anticipate any potential force majeure event and best efforts to address the
8 effects of any potential force majeure event (1) as it is occurring and (2) following the
9 potential force majeure event, such that the delay is minimized to the greatest extent possible.
10 Force Majeure does not include financial inability to complete the O&M. This Decree affords
11 the State authority for force majeure determinations with respect to Paragraph 30 (State
12 Remedy Review), and the initial authority, pursuant to Paragraph 96, for force majeure
13 determinations arising out of O&M activities.

14 63. If any event occurs or has occurred that may delay the performance of the
15 O&M under this Decree, whether or not caused by a force majeure event, OCC and Olin shall
16 notify orally EPA's and the State's Project Managers or, in their absence, their Alternates or,
17 in the event both of EPA's and the State's designated representatives are unavailable, the Chief
18 of the New York Remediation Branch, EPA Region II, and DEC Director of Environmental
19 Remediation, within seven days of when OCC and Olin first knew that the event might cause
20 a delay. Within seven days thereafter, OCC and Olin shall provide in writing to EPA and the
21 State an explanation and description of the reasons for the delay; the anticipated duration of

1 the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for
2 implementation of any measures to be taken to prevent or mitigate the delay or the effect of
3 the delay; OCC's and Olin's rationale for attributing such delay to a force majeure event if
4 they intend to assert such a claim; and a statement as to whether, in the opinion of OCC and
5 Olin, such event may cause or contribute to an endangerment to human health, welfare or the
6 environment. OCC and Olin shall include with any notice all available documentation
7 supporting their claim that the delay was attributable to a force majeure. Failure to comply
8 with the above requirements shall preclude OCC and Olin from asserting any claim of force
9 majeure for that event for the period of time of such failure to comply, and for any additional
10 delay caused by such failure. OCC and Olin shall be deemed to know of any circumstance
11 of which OCC and Olin, any entity controlled by OCC and Olin, or OCC's and Olin's
12 contractors knew or should have known.

13 64. If, for an activity that is part of O&M, or work performed pursuant to
14 Paragraph 30, the State agrees that the delay or anticipated delay is attributable to a force
15 majeure event, or for any other matter EPA agrees that the delay or anticipated delay is
16 attributable to a force majeure event, the time for performance of the obligations under this
17 Decree that are affected by the force majeure event will be extended by EPA or the State, as
18 applicable, for such time as is necessary to complete those obligations. An extension of the
19 time for performance of the obligations affected by the force majeure event shall not, of itself,
20 extend the time for performance of any other obligation. If either EPA or the State do not
21 agree that the delay or anticipated delay has been or will be caused by a force majeure event,
22 EPA or the State, whichever had lead oversight responsibility as provided in this Paragraph,

1 will notify OCC and Olin in writing of its decision. If EPA or the State, whichever has lead
2 oversight responsibility as above, agrees that the delay is attributable to a force majeure event,
3 EPA or the State will notify OCC and Olin in writing of the length of the extension, if any,
4 for performance of the obligations affected by the force majeure event.

5 65. If OCC and Olin elect to invoke the dispute resolution procedures set forth in
6 Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of notice
7 under the preceding Paragraph from EPA or the State (with the 15 day period commencing
8 from the first notice received). In any such proceeding, OCC and Olin shall have the burden
9 of demonstrating by a preponderance of the evidence that the delay or anticipated delay has
10 been or will be caused by a force majeure event, that the duration of the delay or the extension
11 sought was or will be warranted under the circumstances, that best efforts were exercised to
12 avoid and mitigate the effects of the delay, and that OCC and Olin complied with the
13 requirements of Paragraphs 62 and 63, above. If OCC and Olin carry this burden, the delay
14 at issue shall be deemed not to be a violation by OCC and Olin of the affected obligation of
15 this Decree identified to EPA, the State and the Court.

16 XVII. INDEMNIFICATION

17 66. (a) The United States and the State do not assume any liability by entering
18 into this Decree or by virtue of any designation of OCC and Olin as authorized representatives
19 under Section 104(e) of CERCLA. OCC and Olin shall indemnify, save and hold harmless
20 the United States, the State, and their officials, agents, employees, contractors, subcontractors,
21 or representatives for or from any and all claims or causes of action arising from, or on

1 account of, negligent or other wrongful acts or omissions of OCC and Olin, their officers,
2 directors, employees, agents, contractors, subcontractors, and any persons acting on their
3 behalf or under their control, in carrying out activities pursuant to this Decree, including, but
4 not limited to, any claims arising from any designation of OCC and Olin as authorized
5 representatives under Section 104(e) of CERCLA. Further, OCC and Olin agree to pay the
6 United States and the State all costs they incur including, but not limited to, attorneys fees and
7 other expenses of litigation and settlement arising from, or on account of, claims made against
8 the United States or the State based on negligent or other wrongful acts or omissions of OCC
9 and Olin, their officers, directors, employees, agents, contractors, subcontractors, and any
10 persons acting on their behalf or under their control, in carrying out activities pursuant to this
11 Decree. Neither the United States nor the State shall be held out as a party to any contract
12 entered into by or on behalf of OCC and Olin in carrying out activities pursuant to this
13 Decree. Neither OCC and Olin nor any such contractor shall be considered an agent of the
14 United States or the State.

15 (b) The United States or the State shall give OCC and Olin notice of any
16 claim for which the United States or the State plans to seek indemnification pursuant to
17 Paragraph 66(a), and shall consult with OCC and Olin prior to settling such claim.

18 67. OCC and Olin waive all claims against the United States and the State for
19 damages or reimbursement or for set-off of any payments made or to be made to the United
20 States or the State, arising from or on account of any contract, agreement, or arrangement
21 between any one or more of OCC and Olin and any person for performance of Work on or
22 relating to the Site, including, but not limited to, claims on account of construction delays.

1 In addition, OCC and Olin shall indemnify and hold harmless the United States and the State
2 with respect to any and all claims for damages or reimbursement arising from or on account
3 of any contract, agreement, or arrangement between any one or more of OCC and Olin and
4 any person for performance of the Remedial Action, O&M or other activities on or relating
5 to the Site, including, but not limited to, claims on account of construction delays.

6 **XVIII. STIPULATED PENALTIES**

7 68. OCC and Olin shall be liable for stipulated penalties in the amounts set forth
8 in Paragraphs 69 and 70 to the United States (50%) and the State (50%) for failure to comply
9 with the requirements of this Decree specified below, unless excused under Section XVI
10 (Force Majeure). "Compliance" by OCC and Olin shall include both performance of the
11 O&M under this Decree in accordance with all applicable requirements of law, this Decree,
12 and any plans or other documents approved pursuant to this Decree and payments, all within
13 specified time schedules established by and approved under this Decree.

14 69. (a) The following stipulated penalties shall accrue per violation per day for
15 any noncompliance identified in Subparagraph (b):

Penalty Per Violation Per Day	Period of Noncompliance
\$ 2,500	1 st through 15 th day
\$ 5,000	16 th through 30 th day
\$ 7,500	31 st day and beyond

21 (b) Failure to perform the O&M as required by Paragraph 21, perform
22 further response actions as required by Paragraphs 28 and 30(c), or submit work plans for
23 such further response actions as required by Paragraphs 29 and 30(c).

1 70. The following stipulated penalties shall accrue per violation per day for failure
2 to provide access to property or information pursuant to Paragraphs 45 and Section XXVI,
3 failure to submit timely or adequate reports or other written documents pursuant to Paragraphs
4 19(a) and (b), 22, 31-33, 35-37, 45, 46, 53, 56, 57, 60, and 106, and failure to conduct
5 studies and investigations as required by Paragraphs 25 and 30.

6	Penalty Per Violation Per Day	Period of Noncompliance
7	\$ 500	1 st through 15 th day
8	\$ 1,000	16 th through 30 th day
9	\$ 1,500	31 st day and beyond

10 71. All penalties shall begin to accrue on the day after the complete performance
11 is due or the day a violation occurs, and shall continue to accrue through the final day of the
12 correction of the noncompliance or completion of the activity. However, stipulated penalties
13 shall not accrue: (1) with respect to a deficient submission under Section XI (EPA and State
14 Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st
15 day after EPA and the State's receipt of such submission until the date that EPA or the State
16 notifies OCC and Olin of any deficiency; (2) with respect to a decision by the Director of the
17 Emergency and Remedial Response Division, EPA Region II, or DEC Director, Division of
18 Environmental Remediation, under Paragraph 81(b) or 82(a) of Section XIX (Dispute
19 Resolution), during the period, if any, beginning on the 21st day after the date that OCC's and
20 Olin's reply to EPA's or the State's Statement of Position is received until the date that the
21 EPA or DEC Director, as specified above, issues a final decision regarding such dispute; or
22 (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute
23 Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of

1 the final submission regarding the dispute until the date that the Court issues a final decision
2 regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate
3 penalties for separate violations of this Decree.

4 72. Except for any requirements in this Decree which shall be exclusively made by
5 the United States or the State, either EPA or the State may determine that OCC and Olin have
6 failed to comply with a requirement of this Decree. Following such determination, EPA or
7 the State may give OCC and Olin written notification of the same and describe the
8 noncompliance. EPA or the State may send OCC and Olin a written demand for the payment
9 of the penalties. However, penalties shall accrue as provided in the preceding Paragraph
10 regardless of whether OCC and Olin have been notified of a violation or received a demand
11 for the payment of penalties.

12 73. (a) Payment of penalties. All penalties accruing under this Section shall be
13 due and payable to the United States and the State within 30 days of OCC's and Olin's receipt
14 of a demand for payment of the penalties, unless OCC and Olin invoke the Dispute Resolution
15 procedures under Section XIX (Dispute Resolution). All payments to the United States under
16 this Section, except payments of Natural Resource Damage related penalties referenced in
17 Paragraph 76 (c), shall be made by electronics funds transfer (EFT) to the Mellon Bank,
18 Pittsburgh, Pennsylvania. To effectuate payment by EFT, except for penalties referenced in
19 Paragraph 76 (c), OCC and Olin shall instruct their bank(s) to remit payment and provide the
20 following information to their bank(s):

- 21 (i) Amount of payment
22 (ii) Title of Mellon Bank account to receive payment: EPA

- 1 (iii) Account code for Mellon Bank receiving payment: 9108544
- 2 (iv) Mellon Bank ABA Routing Number: 043000261
- 3 (v) Name of Payer
- 4 (vi) EPA Case Number: 02-93-0187
- 5 (vii) Site/spill identifier: CERCLIS No. NYD980506810/02-09

6 To ensure that payment is recorded, OCC and Olin shall send a letter, within one week of the
7 EFT, which references the date of the EFT, the payment amount, the name of the site, the
8 case number, and the names and addresses of the parties making the payment, to the two EPA
9 employees designated for receipt of notice in Paragraph 55 and to EPA's Accounting
10 Operations Section as referenced in Paragraph 95.

11 (b) Payment of NRD related penalties. Payments to the United States for Natural
12 Resource Damage related penalties under Paragraph 76 (c) shall be paid by forwarding a
13 certified or cashier's check(s) made payable to the United States Treasury to the Western
14 District of New York, 138 Delaware Avenue, Buffalo, NY 14202. To ensure that payment
15 is recorded, OCC and Olin shall send a letter, within one week of the certified or cashier's
16 check(s) being sent, which references the date of the certified or cashier's check(s) being sent,
17 the payment amount, the name of the site, the case number, and the names and addresses of
18 the parties making the payment, to the United States Attorney's Office for the Western District
19 of New York, 138 Delaware Avenue, Buffalo, NY 14202, and to the United States pursuant
20 to Section XXVIII.

21 All payments to the State required pursuant to this Section shall be made by certified
22 check payable to the order of the State of New York. Payments shall be sent to:

1 Norman Spiegel, Assistant Attorney General
2 New York State Department of Law
3 Environmental Protection Bureau
4 120 Broadway
5 New York, New York 10271
6

7 OCC and Olin shall accompany such a check with a letter referencing the name of the Site,
8 the case docket number, and OCC's and Olin's names and addresses.

9 74. The payment of penalties shall not alter in any way OCC's and Olin's obligation
10 to complete the performance of the O&M required under this Decree.

11 75. Penalties shall continue to accrue as provided in Paragraph 71 during any
12 dispute resolution period, but need not be paid until the following:

13 (a) If the dispute is resolved by agreement or by a decision that is not
14 appealed to this Court, accrued penalties determined to be owing shall be paid to EPA and the
15 State within 15 days of the agreement or the receipt of the decision or order;

16 (b) If the dispute is appealed to this Court and the United States and/or the
17 State prevails in whole or in part, OCC and Olin shall pay all accrued penalties determined
18 by the Court to be owed to EPA and the State within 45 days of receipt of the Court's decision
19 or order, except as provided in Subparagraph (c) below;

20 (c) If the District Court's decision is appealed by any Party, OCC and Olin
21 shall pay all accrued penalties determined by the District Court to be owing to the United
22 States and the State into an interest-bearing escrow account within 45 days of receipt of the
23 Court's decision or order. Penalties shall be paid into this account as they continue to accrue,
24 at least every 45 days. Within 15 days of receipt of the final appellate court decision, the

1 escrow agent shall pay the balance of the account to EPA and the State or to OCC and Olin
2 to the extent that they prevail.

3 76. (a) If OCC and Olin fail to pay stipulated penalties when due, the United
4 States and/or the State may institute proceedings to collect the penalties, as well as interest.
5 OCC and Olin shall pay Interest on the unpaid balance through the date of payment, Interest
6 beginning to accrue on the date of demand made pursuant to Paragraph 72.

7 (b) Failure to Make Timely Payment of Response Costs. If any amount to
8 be paid by OCC or Olin under Section XXII (Payment of Past Response Costs by OCC and
9 Olin) or Section XXIII (Payment of Future Response Costs And State Oversight of Site
10 Remedy)(subject to Dispute Resolution pursuant to Section XIX) of this Decree is not paid
11 within five days of the required date, the party failing to make the payment shall pay to EPA
12 and/or the State, as appropriate, as a stipulated penalty, in addition to the Interest required by
13 this Section, \$2,500 per day that such payment is late and such penalties shall accrue through
14 the date of payment of the amount due under Section XXII.

15 (c) Failure to Make Timely Natural Resource Damage Payments. If any
16 amount to be paid by OCC or Olin under Section XXIV (Project and Payments by OCC and
17 Olin in Satisfaction of Natural Resource Damage Claims) of this Decree is not paid within
18 five days of the required date, the party failing to make the payment shall pay to the United
19 States and/or the State, as appropriate, as a stipulated penalty, in addition to the Interest
20 required by this Section, \$2,500 per day that such payment is late and such penalties shall
21 accrue through the date of payment of the amount due under Section XXIV.

1 (d) Nothing in this Decree shall be construed as prohibiting, altering, or in
2 any way limiting the ability of the United States or the State to seek any other remedies or
3 sanctions available by virtue of OCC's and Olin's violation of this Decree or of the statutes
4 and regulations upon which it is based, including, but not limited to, penalties pursuant to
5 Section 122(l) of CERCLA. Provided, however, that the United States or the State shall not
6 seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a
7 stipulated penalty is provided herein, except in the case of a willful violation of the Decree.

8 77. Notwithstanding any other provision of this Section, the United States may, in
9 its unreviewable discretion, waive any portion of stipulated penalties that accrued to the United
10 States pursuant to this Decree. The State may, in its unreviewable discretion, waive any
11 portion of stipulated penalties that accrued to the State pursuant to this Decree.

12 XIX. DISPUTE RESOLUTION

13 78. Unless otherwise expressly provided for in this Decree, the dispute resolution
14 procedures of this Section shall be the exclusive mechanism to resolve disputes arising under
15 or with respect to this Decree. However, the procedures set forth in this Section shall not
16 apply to actions by the United States or the State to enforce obligations of OCC and Olin that
17 have not been disputed in accordance with this Section.

18 79. Any dispute which arises under or with respect to this Decree shall in the first
19 instance be the subject of informal negotiations between the parties to the dispute. In the event
20 EPA or the State is not a party to the dispute, it shall nevertheless be advised of the dispute
21 upon its commencement and afforded the opportunity to participate as a party. The period for

1 informal negotiations shall not exceed 60 days from the time the dispute arises, unless it is
2 modified by written agreement of the parties to the dispute. The dispute shall be considered
3 to have arisen when one party sends the other parties a written Notice of Dispute.

4 80. (a) In the event that the parties cannot resolve a dispute by informal
5 negotiations under the preceding Paragraph, then the position advanced by EPA or the State
6 shall be considered binding unless, within 20 days after the conclusion of the informal
7 negotiation period, a party invokes the formal dispute resolution procedures of this Section by
8 serving on the aforementioned governmental party a written Statement of Position on the
9 matter in dispute, including, but not limited to, any factual data, analysis or opinion
10 supporting that position and any supporting documentation relied upon by the party. The
11 Statement of Position shall specify the party's position as to whether formal dispute resolution
12 should proceed under Paragraph 81 or Paragraph 82.

13 (b) Within fourteen (14) days after receipt of the party's Statement of
14 Position, EPA or the State, as provided in subparagraph (a), will serve on the party its
15 Statement of Position, including, but not limited to, any factual data, analysis, or opinion
16 supporting that position and all supporting documentation relied upon by EPA or the State.
17 EPA's or the State's Statement of Position shall include a statement as to whether formal
18 dispute resolution should proceed under Paragraph 81 or 82. Within 10 days after receipt of
19 this Statement of Position, the party may submit a Reply.

20 (c) If there is disagreement between EPA or the State, and a party as to
21 whether dispute resolution should proceed under Paragraph 81 or 82, the parties to the dispute
22 shall follow the procedures set forth in the Paragraph determined by EPA or the State to be

1 applicable. However, if a party ultimately appeals to the Court to resolve the dispute, the
2 Court shall determine which Paragraph is applicable in accordance with the standards of
3 applicability set forth in Paragraphs 81 and 82.

4 (d) The term "EPA or the State" when used in Paragraphs 80, 81, 82 and
5 83 refers solely to EPA with respect to all disputes in which EPA is involved either initially
6 or as a result of its decision to participate as provided in Paragraph 79, except that in disputes
7 which arise pursuant to Paragraph 30 (State Remedy Review) the term "EPA or the State" shall
8 refer solely to the State.

9 (e) Notwithstanding subparagraph (d), in the event that a dispute arises
10 between EPA and the State concerning whether any further response action required by the State
11 would conflict with the Remedial Action or Operation and Maintenance or conflict with, or cause
12 a significant delay in the implementation of, any further response actions required by EPA
13 pursuant to Paragraphs 25 through 29, the term "EPA or the State" when used in Paragraphs 80,
14 81, 82 and 83 shall refer solely to EPA.

15 81. Formal dispute resolution for disputes pertaining to the selection or adequacy
16 of any additional response action and all other disputes that are accorded review on the
17 administrative record under applicable principles of administrative law shall be conducted
18 pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the
19 adequacy of any additional response action includes, without limitation: (1) the adequacy or
20 appropriateness of plans, procedures to implement plans, or any other items requiring approval
21 by EPA or the State under this Decree; and (2) the adequacy of the performance of the O&M
22 taken pursuant to this Decree. Nothing in this Decree shall be construed to allow any dispute

1 by OCC and Olin regarding the validity of the ROD's provisions or the appropriateness of the
2 remedy selected in the ROD.

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

7 (b) For all disputes involving EPA, the Director of the Emergency and
8 Remedial Response Division, EPA Region II will issue a final administrative decision
9 resolving the dispute based on the administrative record described in Paragraph 81(a). For
10 disputes involving the State, but not EPA, the DEC Director, Division of Environmental
11 Remediation will issue a final administrative decision resolving the dispute based on the
12 administrative record described in Paragraph 81(a). Any such decision shall be binding upon
13 the parties, subject only to the right to seek judicial review pursuant to Paragraphs 81(c) and
14 (d).

15 (c) Any administrative decision made by EPA or the State pursuant to
16 Paragraph 81(b) shall be reviewable by this Court, provided that a motion for judicial review
17 of the decision is filed with the Court and served on all Parties within 10 days of receipt of
18 EPA or the State's decision. The motion shall include a description of the matter in dispute,
19 the efforts made by the parties to resolve it, the relief requested, and the schedule, if any,
20 within which the dispute must be resolved to ensure orderly implementation of this Decree.
21 The United States and/or the State may file a response to such motion.

1 (d) In proceedings on any dispute governed by this Paragraph, any party
2 disputing the decision of the designated individual in Paragraph 81(b) above shall have the
3 burden of demonstrating that such decision is arbitrary and capricious, or otherwise not in
4 accordance with law. Judicial review of EPA or the State's decision shall be on the
5 administrative record compiled pursuant to Paragraph 81(a).

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

10 (a) Following receipt of the Statement of Position submitted pursuant to
11 Paragraph 80, the Director of the Emergency and Remedial Response Division, EPA Region
12 II, or DEC Director, Division of Environmental Remediation, will issue a final decision
13 resolving the dispute. That decision shall be binding unless, within 10 days of receipt of the
14 decision, the party files with the Court and serves on the other parties a motion for judicial
15 review of the decision setting forth the matter in dispute, the efforts made by the parties to
16 resolve it, the relief requested, and the schedule, if any, within which the dispute must be
17 resolved to ensure orderly implementation of the Decree. The United States and/or the State
18 may file a response to said motion.

19 (b) Judicial review of any dispute governed by this Paragraph shall be
20 governed by applicable principles of law.

21 83. The invocation of formal dispute resolution procedures under this Section shall
22 not extend, postpone or affect in any way any obligation of OCC and Olin under this Decree

1 not directly in dispute, unless EPA, or the State agrees, or the Court decides otherwise.
2 Stipulated penalties with respect to the disputed matter shall continue to accrue but payment
3 shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment,
4 stipulated penalties shall accrue from the first day of noncompliance with any applicable
5 provision of this Decree. In the event that OCC and Olin do not prevail on the disputed issue,
6 stipulated penalties may be assessed and paid as provided in Section XVIII (Stipulated
7 Penalties).

8 XX. RELEASE AND COVENANTS NOT TO SUE BY PLAINTIFFS

9 84. In consideration of the actions that will be performed and the payments that will
10 be made by OCC and Olin under the terms of the Decree, and except as specifically provided
11 in Paragraphs 85 to 89 of this Section, the United States and the State covenant not to sue or
12 to take administrative action against OCC and Olin and release OCC and Olin, their
13 contractors and employees (to the extent they may be liable in their capacity as contractors or
14 employees) for (1) all claims or causes of action made in the Complaints relating to the Site
15 arising from the disposal, release, or threat of release at or from the Site of Waste Material,
16 including wastes from the production of chemicals, and (2) any claim for Natural Resource
17 Damages pursuant to Section 107 of CERCLA or any other provisions of law or the common
18 law arising from the disposal, release, or threat of release at or from the Site of Waste
19 Material, including wastes from the production of chemicals (hereinafter "Covenants Not to
20 Sue"). With respect to Past Response Costs and Natural Resource Damages, and all claims
21 by the State for penalties and punitive damages, these Covenants Not to Sue shall take effect

1 upon the receipt by EPA, the Trustees, and the State of the payments required by Section
2 XXII (Payment of Past-Response Costs by OCC and Olin) and Section XXIV (Project and
3 Payments by OCC and Olin in Satisfaction of Natural Resource Damage Claims). With
4 respect to liability for other matters not reserved in Paragraphs 85-89, these Covenants Not
5 to Sue shall take effect upon the approval of the Certification of Completion of the Remedial
6 Action by EPA pursuant to Paragraph 20 of Section VI (Certification of Completion of The
7 Remedial Action). These Covenants Not to Sue are conditioned upon the satisfactory
8 performance by OCC and Olin of their obligations under this Decree. These Covenants Not
9 to Sue extend only to OCC and Olin and do not extend to any other person.

10 85. United States' Post-Certification Approval Reservations

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

- 16 (i) conditions at the Site, previously unknown to EPA, are discovered, or
17
18 (ii) information, previously unknown to EPA is received, in whole or in
19 part,

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

23 86. State's Post-Certification Approval Reservations

1 Notwithstanding any other provision of this Decree, except for the requirements of Paragraphs
2 30 and 90, as applicable, the State reserves, and this Decree is without prejudice to, the right
3 jointly with, or separately from, the United States to institute proceedings in this action or in
4 a new action filed pursuant to state or federal law or to issue an Administrative Order pursuant
5 to State law, e.g., ECL §§27-1301 et seq., seeking to compel OCC and Olin (1) to perform
6 other response activities or actions at the Site, or (2) to reimburse the State for additional
7 response costs for response activities or actions at the Site, if subsequent to Certification of
8 Completion of Remedial Action:

9 (i) conditions at the Site, previously unknown to the State, are
10 discovered, or,

11 (ii) information, previously unknown to the State is received, in
12 whole or in part, after Certification of Completion,

13 and these previously unknown conditions or this information together with any other relevant
14 information, indicate that the Remedial Action is not protective of human health or the
15 environment.
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18 87. For purposes of Paragraphs 85 and 86, the information and the conditions
19 known to EPA and the State shall include only that information and those conditions known
20 by EPA and the State as of the date of the approval of the Certification of Completion of the
21 Remedial Action and set forth in the Record of Decision, the administrative record supporting
22 the Record of Decision, the post-ROD administrative record, or in any information received
23 by EPA and the State pursuant to the requirements of this Decree prior to Certification of
24 Completion of the Remedial Action. For purposes of Paragraphs 85(ii) and 86(ii), conditions

1 or information previously known shall also include information and conditions set forth in any
2 of the documents listed in Appendix B.

3 88. General reservations of rights. The Covenants Not to Sue set forth above do
4 not pertain to any matters other than those expressly specified in Paragraph 84. The United
5 States and the State reserve, and this Decree is without prejudice to, all rights against OCC
6 and Olin and OCC and Olin reserve all defenses, except as specifically limited in this Decree,
7 with respect to all other matters, including but not limited to, the following:

8 (a) claims based on a failure by OCC and Olin to meet a requirement of this
9 Decree;

10 (b) liability arising from the past, present, or future disposal, release, or threat of
11 release of Waste Material outside of the Site;

12 (c) liability for future disposal of Waste Material at the Site, other than as provided
13 in the ROD, or otherwise ordered by EPA or the State;

14 (d) criminal liability;

15 (e) liability for violations of federal or state law which occur during or after
16 implementation of the Remedial Action; and

17 (f) liability, prior to the approval of the Certification of Completion of the
18 Remedial Action, for additional response actions that are necessary to achieve remediation of
19 the Site.

20 89. O&M Takeover. In the event EPA or the State determines that OCC and Olin
21 have ceased implementation of any portion of the O&M, are seriously or repeatedly deficient
22 or late in their performance of the O&M, or are implementing the O&M in a manner which

1 may cause an endangerment to human health or the environment, EPA or the State may
2 assume the performance of all or any portions of the O&M as EPA or the State determine is
3 necessary. OCC and Olin may invoke the procedures set forth in Section XIX (Dispute
4 Resolution) to dispute EPA or the State's determination that takeover of the O&M is warranted
5 under this Paragraph. Costs incurred by the United States and the State in performing the
6 O&M pursuant to this Paragraph shall be considered Future Response Costs that OCC and
7 Olin shall pay pursuant to Section XXIII.

8 90. Notwithstanding any other provision of this Decree, the United States and the
9 State retain all authority and reserve all rights to take any and all response actions authorized
10 by law; however, the right of the United States and the State to compel OCC and Olin to
11 perform or to seek and obtain from OCC and Olin reimbursement with respect to such
12 response actions is limited as set forth in this Decree. Nothing contained in this Decree shall
13 be deemed to enhance or diminish any rights that the State may have under CERCLA,
14 including remedy review.

15 XXI. COVENANTS BY OCC AND OLIN

16 91. Covenant Not to Sue. Subject to the reservations in Paragraph 92, OCC and
17 Olin hereby covenant not to sue and agree not to assert any claims or causes of action against
18 the United States or the State with respect to the Site, Past and Future Response Costs as
19 defined herein, or this Decree, including, but not limited to:

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

4 (b) any claims against the United States or the State, including any department,
5 agency or instrumentality of the United States or the State under CERCLA Sections 107 or
6 113, or any other provision of State or federal law, related to the Site, or

7 (c) any claims arising out of response activities at the Site, including claims based
8 on EPA's or the State's selection of response actions, oversight of response activities or
9 approval of plans for such activities.

10 92. OCC and Olin reserve, and this Decree is without prejudice to, claims against
11 the United States, subject to the provisions of Chapter 171 of Title 28 of the United States
12 Code, or the State for money damages for injury or loss of property or personal injury or
13 death caused by the negligent or wrongful act or omission of any employee of the United
14 States or the State while acting within the scope of his office or employment under
15 circumstances where the United States or the State, if private persons, would be liable to the
16 claimant in accordance with the law of the place where the act or omission occurred.
17 However, any such claim shall not include a claim for any damages caused, in whole or in
18 part, by the act or omission of any person, including any contractor, who is not a federal or
19 state employee as that term is defined in 28 U.S.C. Section 2671; nor shall any such claim
20 include a claim based on EPA's or the State's selection of response actions, or the oversight
21 or approval of OCC's and Olin's plans or activities. The foregoing applies only to claims

1 which are brought pursuant to any statute other than CERCLA and for which the waiver of
2 sovereign immunity is found in a statute other than CERCLA.

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

6 94. OCC and Olin agree to waive all claims or causes of action that they may have
7 for all matters relating to the Site, including for contribution, against the following persons:

8 (a) any person (i) whose liability to OCC and Olin with respect to the Site is based
9 solely on CERCLA Section 107(a)(3) or (4), and (ii) who arranged for the disposal, treatment,
10 or transport for disposal or treatment, or accepted for transport for disposal or treatment, of
11 only Municipal Solid Waste or Sewage Sludge owned by such person; and

12 (b) any person (i) whose liability to OCC and Olin with respect to the Site is based
13 solely on CERCLA Section 107(a)(3) or (4), and (ii) who arranged for the disposal, treatment,
14 or transport for disposal or treatment, or accepted for transport for disposal or treatment, of
15 55 gallons or less of liquid materials containing hazardous substances, or 100 pounds or less
16 of solid materials containing hazardous substances, except where EPA has determined that
17 such material contributed or could contribute significantly to the costs of response at the Site.

1 XXII. PAYMENT OF PAST RESPONSE COSTS BY OCC AND OLIN

2 95. Payment of Past Response Costs to the Superfund.

3 (a) OCC and Olin shall, within 30 days of entry of this Decree by the Court, pay
4 to the EPA Hazardous Substance Superfund \$6,075,000 in reimbursement of Past Response
5 Costs incurred through March 31, 1997, plus Interest on that amount calculated from May 23,
6 1997, until payment is made. All payments shall be made by FedWire Electronic Funds
7 Transfer (EFT) to the DOJ account in accordance with current EFT procedures, referencing
8 USAO File Number 93VO838, the EPA Region and Site Spill ID Number 02-09, and DOJ
9 Case Number 90-11-2-951. Payment shall be made in accordance with instructions provided
10 to OCC and Olin by the Financial Litigation Unit of the U.S. Attorney's Office in the Western
11 District of New York following lodging of the Decree. Any payments received by DOJ after
12 4:00 p.m. Eastern Time shall be credited on the next business day. Notice that payment has
13 been made shall be sent by OCC and Olin to EPA and DOJ as provided in Section XXVIII
14 (Notices) and to:

15 Accounting Operations Section
16 Financial Management Branch
17 United States Environmental Protection Agency
18 290 Broadway, 29th Floor
19 New York, NY 10007-1866

20 (b) OCC and Olin shall, within 30 days of the entry of this Decree by the Court,
21 pay to the State of New York the sum of \$609,891.00, in reimbursement of Past Response
22 Costs incurred through March 31, 1997, plus Interest on that amount calculated from May 23,

1 1997, until payment is made by certified check made payable to the New York State

2 Hazardous Waste Remediation Fund, and sent to:

3 Norman Spiegel, Assistant Attorney General
4 New York State Department of Law
5 Environmental Protection Bureau
6 20 Broadway
7 New York, New York 10271

8
9 (c) All payments under Sections XXII, XXIII and XXIV are compensatory in
10 nature. No amounts are being paid for, or are in lieu of, fines or penalties imposed under
11 CERCLA or any other state or Federal law or common law.

12 **XXIII. PAYMENT OF FUTURE RESPONSE COSTS AND STATE**
13 **OVERSIGHT OF SITE REMEDY**

14 96. In addition to the payments set forth in Section XXII, OCC and Olin shall
15 reimburse the United States and the State for Future Response Costs, including, but not limited
16 to, enforcement costs and the following categories of costs:

17 (a) The United States and the State shall each present periodic statements
18 of, and OCC and Olin shall reimburse the United States and the State for, costs in the
19 following categories, which costs in the first two categories, based on current estimates, are
20 not anticipated to exceed a total of \$350,000 for the United States (notwithstanding the above,
21 the United States specifically reserves the right to obtain reimbursement for costs incurred in
22 excess of said \$350,000):

23 (1) all response costs incurred by the United States and
24 the State for oversight of OCC's and Olin's performance of
25 the Remedial Action pursuant to the terms of the Order as

1 well as OCC's and Olin's performance of O&M pursuant to
2 this Decree.

3 (2) all costs incurred by the United States and the State
4 for payroll, travel, supply, contractor and equipment
5 expenses in providing continued information services to the
6 community concerning the Site.

7 (3) all costs incurred by the United States and the State
8 with respect to Remedy Review under Section VIII.

9 (4) all costs incurred by the United States and the State
10 in assisting OCC and Olin in obtaining access or use
11 restrictions under Paragraph 47.

12 (5) all costs incurred by the United States and the State
13 in making or overseeing any emergency response under
14 Paragraph 60.

15 (6) all costs incurred by the United States and the State
16 in taking over the O&M pursuant to Paragraph 89.
17

18 The EPA statements will be accompanied by a printout of cost data in EPA's financial
19 management system. The State's statements will be accompanied by a printout of cost data
20 and other documentation in the State's financial management system. OCC and Olin shall
21 make all payments to EPA and/or the State within 30 days of the date of each statement
22 requiring payment, in accordance with the procedures as set forth in Paragraph 73, above.

23 (b) EPA has designated DEC as the lead agency for the oversight of OCC's
24 and Olin's performance of long-term Site O&M. The overall objective of the O&M is to
25 ensure that the remedy meets the Remedial Action objectives for protection of human health
26 and the environment in accordance with the ROD, as amended, the approved O&M Manual,
27 and all applicable or relevant and appropriate federal and state laws and regulations. DEC will

1 provide an appropriate level of oversight to ensure that this objective of the O&M of the
2 Remedial Action is met.

3 (c) DEC oversight of O&M will be provided through the assignment of
4 an on-Site Inspector (Inspector). It is anticipated that the Inspector will be a State employee,
5 however, the State may, in its discretion, use contractors to provide oversight at the Site.
6 DEC may also use, in its discretion, one of the DEC staff responsible for monitoring OCC's
7 Buffalo Avenue Plant activities (Permit Monitor Program), as specified in the New York State
8 Part 373 (RCRA) permit (DEC Permit No. 90-86-0707) issued to OCC for that facility. DEC
9 may utilize the Permit Monitor Program to minimize its oversight costs associated with the
10 O&M required pursuant to this Decree in a manner that also will ensure that the O&M
11 objective is met and the public interests are otherwise served.

12 Other DEC personnel may assist the Inspector in oversight and technical review for
13 Site-related activities and issues. In addition, New York State Department of Health personnel
14 may periodically inspect the Site to ensure that the remedy remains effective for the protection
15 of human health.

16 Oversight tasks to be performed by the Inspector include, but are not limited to, the
17 following:

- 18 (1) Document Review - Review of all project documents, including among
19 others, O&M sampling results, inspection reports, logs and reports, and
20 proposals.

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(2) Oversight - Oversight of O&M activities carried out on-Site or elsewhere, including among other things, sampling, inspections, repairs, and Site construction work.

(3) Sampling - Collection or oversight of the collection of environmental samples, site measurements, sample preparation and all related activities.

(4) Direction and Approval - The Inspector will provide direction and approval to OCC and Olin as appropriate to ensure that the day-to-day operation and maintenance of the selected remedy, as well as any significant changes to the operation of all components of the selected remedy which do not require EPA approval under subparagraph (d) below, will protect human health and the environment. Such approval or direction, however, shall not apply to non-ministerial actions including, among other things, revision to the requirements of the ROD; redefinition of the components of the selected remedy; revision of the Remedial Action objectives, treatment standards, or performance criteria; or revisions to the substantive conditions or requirements for on-Site activities for which no permit is required that would otherwise have been required if a permit were necessary, or for any permit conditions or requirements required for activities related to the Site which are conducted off-Site.

1 (d) EPA will continue its lead role with respect to any proposed revisions to
2 the requirements of the ROD, such as changes to the components of the selected remedy, or
3 revision of the Remedial Action objectives, treatment standards, or performance criteria for
4 the Site, as well as with respect to the performance of the periodic reviews, as referenced in
5 Paragraph 25 of Section VIII, to ensure that the Remedial Action remains protective of human
6 health and the environment. The State retains its authority under Paragraph 30. The DEC
7 will continue to provide technical review and input on all aspects of the remedial project,
8 including such items as change orders for remedial construction, acceptance of plan revisions,
9 and approvals of closure reports. DEC personnel shall have all the rights that EPA personnel
10 have under the Order to access the Site, attend and participate in meetings, and to participate
11 in other forms of communication involving the implementation of Remedial Action pursuant
12 to the Order, and the implementation of O&M pursuant to this Decree.

13 (e) To the extent that the oversight is conducted by the Inspector who has
14 been assigned from the Permit Monitor Program, the salary, associated benefits, and non-
15 personal service costs incurred or to be incurred since March 31, 1997, and attributable to
16 such individual will be as provided for in that Program. Consistent with the Permit
17 procedures for funding of this Monitor Program, the State will charge the salary, associated
18 benefits, and non-personal service costs attributable to the Inspector against the Monitor
19 Program's dedicated escrow account established under the Permit and will bill OCC in
20 accordance with those Permit procedures which require OCC to maintain a minimum balance
21 of funds in the escrow account. All other oversight costs, including, without limitation, costs
22 associated with the use of other DEC or DOH personnel (direct labor, overhead, travel), and

1 analytical costs, consultant fees, and contract costs for work performed in connection with
2 oversight of the implementation of the Remedial Action at the Site, will be billed directly to
3 the Companies and payment will be due within thirty (30) days after receipt of such itemized
4 invoice from the DEC. Payment where required shall be made by check payable to the State
5 of New York. Payment shall be sent to:

6 Norman Spiegel, Assistant Attorney General
7 New York State Department of Law
8 Environmental Protection Bureau
9 120 Broadway
10 New York, New York 10271
11

12 Itemization of costs shall include an accounting of personal services indicating the employee
13 name, title, bi-weekly salary, and time spent (in hours) on the project during the billing
14 period. The DEC's approved fringe benefit and indirect cost rates shall be applied. Non-
15 personal service cost shall be summarized by category of expense (e.g., supplies, materials,
16 travel, contractual). Upon petition by OCC and Olin pursuant to Paragraph 81, the Court may
17 consider any disputes between OCC and Olin, on the one hand, and the State, on the other
18 hand, relating to the recoverability of the costs described in this Paragraph 96(e) pursuant to
19 CERCLA and/or other applicable laws and regulations.

20 XXIV. PROJECT AND PAYMENTS BY OCC AND
21 OLIN IN SATISFACTION OF NATURAL
22 RESOURCE DAMAGE CLAIMS

23 97. OCC and Olin shall provide funding for the following two mitigation projects
24 which have been approved by the State and the United States. These projects will serve as
25 mitigation projects for the replacement of 2.9 acres of shallow water habitat and emergent

1 wetlands in the embayment of the Niagara River that were lost as a result of the installation
2 of the remedy at the Site.

3 (a) Within thirty (30) days after receiving notification from the DEC that the creation of
4 approximately 0.9 acres of shallow water habitat vegetated with wild celery seed (*Vallisneria* sp.)
5 in the Niagara River at the Cherry Farms Site in Tonawanda, New York has been completed to
6 the satisfaction of DEC, OCC and Olin shall pay \$97,900 by certified check to: Cherry Farms
7 Participating Parties Trust Account, c/o R. Hugh Stephens, Esq., Raichle, Banning, Weiss &
8 Stephens, 410 Main Street, Buffalo, New York 14202. A copy of all payment documents shall
9 be sent to Norman Spiegel, Assistant Attorney General, New York State Department of Law,
10 Environmental Protection Bureau, 120 Broadway, New York, New York 10271. In the event
11 that a planting(s) of wild celery has substantially failed within six years of DEC's notification to
12 OCC and Olin of project completion, DEC shall provide to OCC and Olin a description of, and
13 cost estimate for, a replanting(s) or other corrective action(s) that is/are required to be taken. At
14 OCC and Olin's written request, the corrective action(s) and estimate(s) shall be the subject of
15 informal dispute resolution between DEC and OCC and Olin for a period not to exceed sixty (60)
16 days from the date of such written request(s). Following any such informal dispute resolution
17 process, DEC shall make a final decision in writing which shall not be subject to further review
18 pursuant to this Decree. Within thirty (30) days of DEC's final decision, OCC and Olin shall pay
19 to DEC the estimated dollar amount of the work. The total amount that OCC and Olin shall pay,
20 if replantings or corrective actions are necessary, shall not exceed \$20,000. Upon completion of
21 any work performed, DEC shall provide OCC and Olin with a final billing showing the amounts
22 actually expended for such replanting or corrective action. Any funds provided by OCC and Olin

1 on the basis of the estimate that were not actually incurred will be returned to OCC and Olin.
2 Any costs incurred in excess of the estimate, but in no event to exceed the aggregate total of
3 \$20,000, shall be remitted by OCC and Olin to DEC within thirty (30) days of OCC's and Olin's
4 receipt of the final billing from DEC. The manner of payment shall be specified in writing by the
5 State.

6 (b) Within thirty (30) days of the effective date of this Decree, OCC and Olin shall
7 pay \$89,100, by certified check, payable to the State of New York. The payment shall be sent
8 to Norman Spiegel, Assistant Attorney General, New York State Department of Law,
9 Environmental Protection Bureau, 120 Broadway, New York, New York 10271. These
10 monies shall be utilized by DEC to fund the restoration of approximately 2 acres of freshwater
11 marsh (State Wetland TW-19) which will be added to an existing project at Buckhorn Island
12 State Park, that is currently being implemented jointly by DEC and the New York State Office
13 of Parks, Recreation and Historic Preservation. OCC and Olin shall submit copies of the
14 certified check to those individuals representing the United States and the State who are
15 designated for receipt of written notice pursuant to Section XXVIII of this Decree.

16 98. In addition to the requirements of Paragraph 97, within thirty days of the
17 effective date of this Decree, OCC and Olin will pay (a) \$10,962.95 as reimbursement of New
18 York State's past assessment costs (NYS Assessment Payment), (b) \$39,643 as reimbursement
19 of DOI's past assessment costs (DOI Assessment Payment), and (c) \$468,258.71 for Trustee
20 natural resource damages (Natural Resource Damages Payment). Said payments shall
21 constitute a full and complete release for all claims for Natural Resource Damages in this
22 action by the Trustees, subject only to the Natural Resource Damages Reopener Provisions set

1 forth in Paragraph 99. OCC and Olin agree that they will not assert in response to any claim
2 for natural resource damages by the Trustees that Mirex is attributable to the 102nd Street
3 Landfill Site. These payments shall be made as follows:

4 (a) New York State Assessment Payment. Payment shall be made by certified check,
5 payable to the State of New York. This payment shall be sent to Norman Spiegel, Assistant
6 Attorney General, New York State Department of Law, Environmental Protection Bureau, 120
7 Broadway, New York, New York 10271. OCC and Olin shall submit copies of the payment
8 documents to those individuals who are designated for receipt of written notice to the State,
9 pursuant to Section XXVIII of this Decree.

10 (b) DOI Assessment Payment. Payment shall be made by Fedwire Electronic Funds
11 Transfer to the U.S. Department of Justice account in accordance with current electronic funds
12 transfer procedures, referencing USAO File Number 93VO838, and DOJ Case Number 90-11-
13 2-951 and NRDAR account number 14X5198. Payment shall be made in accordance with
14 instructions provided to OCC and Olin by the Financial Litigation Unit of the United States
15 Attorney's Office for the Western District of New York, following entry of the Decree. Any
16 payments received after 4:00 p.m. Eastern Time shall be credited on the next business day.
17 OCC and Olin shall send notice that such payment has been made to the persons listed in
18 Section XXVIII (Notices and Submissions) for notice to the United States. Notice to DOI that
19 such payment has been made shall be sent to:

20 Bruce Nessler
21 DOI Restoration Fund
22 NBC/Division of Financial Management Services Branch of Accounting Operations
23 Mail Stop 1313
24 1849 C St. NW
25 Washington, D.C. 20240

1 and shall reference Account Number 14X5198 (NRDAR) and state that the payment is for
2 reimbursement of past assessment costs for natural resource damage assessment with respect
3 to the 102nd Street Superfund Site, situated in Niagara Falls, New York, and is being paid by
4 OCC and Olin.

5 (c) Natural Resource Damages Payment. Payment shall be made using the U.S.
6 Treasury's Remittance Express program, or, in the event said program is not available to
7 Settling Defendant then via Federal Wire Transfer. Payment shall be made in accordance with
8 instructions provided by the Department of the Interior. Any payments received after 4:00
9 p.m. Eastern Time shall be credited on the next business day. Settling Defendant's notice to
10 DOI that such payment has been made shall be sent to:

11 Bruce Nessler
12 DOI Restoration Fund
13 NBC/Division of Financial Management Services Branch of Accounting Operations
14 Mail Stop 1313
15 1849 C St. NW
16 Washington, D.C. 20240

17 and shall reference Account Number 14X5198 (NRDAR), shall state that the payment is for
18 Natural Resource Damages with respect to the 102nd Street Superfund Site, situated in Niagara
19 Falls, New York, is being paid by OCC and Olin, and shall reference that the payment is for
20 natural resource damages under the trusteeship of DOI, NOAA and the State of New York.
21 A copy of the notice letter shall be sent by OCC and Olin to the United States and the State
22 of New York as provided in Section XXVIII.

1 99. Natural Resource Damages Reopener Provisions. Notwithstanding any other
2 provision of this Decree, the Trustees reserve the right to seek recovery of Natural Resource
3 Damages, based on:

4 (a) conditions with respect to the Site, unknown to the EPA, the State or the
5 Trustees at the date of lodging of this Decree, that result in releases of hazardous substances,
6 which releases contribute to injury to, destruction of, or loss of natural resources; or,

7 (b) information received after the date of lodging of the Decree which,
8 together with other relevant information, indicates that there is injury to, destruction of, or
9 loss of natural resources, of a type that was unknown, or of a magnitude greater than was
10 known to the EPA, the State or the Trustees at the date of lodging of this Decree. For
11 purposes of Paragraph 99, the information and the conditions known shall include only that
12 information and those conditions known as of the date of lodging of this Decree, and set forth
13 in the Record of Decision, the administrative record supporting the Record of Decision, or the
14 post-ROD administrative record. For purposes of Paragraph 99, conditions or information
15 previously known shall also include information and conditions set forth in any of the
16 documents listed in Appendix B.

17 100. Disbursement of Funds and Implementation of Restoration. The jurisdiction,
18 trusteeships, and restoration goals of DOI, NOAA and the State of New York as natural
19 resource trustees over the injured natural resources overlap. Accordingly, the monies paid
20 pursuant to Paragraph 98(c), above, shall be held by the Department of the Interior in its
21 Natural Resource Damage Assessment and Restoration Fund, and said monies, together with
22 all interest accrued thereon, shall only be spent to restore, replace, or acquire the equivalent

1 of the injured natural resources, for planning, oversight, implementation and monitoring of
2 said activities. All monies recovered pursuant to Paragraph 98(c) shall be deemed joint
3 federal/state funds, and shall be spent in conformity with this Decree and the provisions and
4 procedures set forth in a Memorandum of Agreement (MOA) to be entered into among DOI,
5 NOAA and the State. The MOA shall require unanimous trustee decision making and may
6 include preferential review of projects for restoration or enhancement of Niagara River habitat
7 or habitat in Niagara or Erie County. None of the monies recovered for natural resource
8 damages arising from the Site shall be obligated or expended prior to the execution of a
9 mutually agreed upon Memorandum of Agreement.

10 XXV. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

11 101. Nothing in this Decree shall be construed to create any rights in, or grant any
12 cause of action to, any person not a Party to this Decree. The preceding sentence shall not
13 be construed to waive or nullify any rights that any person not a signatory to this Decree may
14 have under applicable law. Except as otherwise provided herein, each of the Parties expressly
15 reserves any and all rights (including, but not limited to, any right to contribution), defenses,
16 claims, demands, and causes of action which each Party may have with respect to any matter,
17 transaction, or occurrence relating in any way to the Site against any person not a Party
18 hereto.

19 102. The Parties agree, and by entering this Decree this Court finds, that OCC and
20 Olin, including their officers, directors, employees, successors and assigns are entitled, as of

1 the effective date of this Decree, to protection from contribution actions or claims as provided
2 by CERCLA Section 113(f)(2), 42 U.S.C. §9613(f)(2) for matters addressed in this Decree.

3 103. OCC and Olin agree that with respect to any suit or claim for contribution
4 brought by either of them for matters related to this Decree they will notify the United States
5 and the State in writing no later than 60 days prior to the initiation of such suit or claim.

6 104. OCC and Olin also agree that, with respect to any suit or claim for contribution
7 brought against them for matters related to this Decree, they will notify in writing the United
8 States and the State within 10 days of service of the complaint on them. In addition, OCC and
9 Olin shall notify the United States and the State within 10 days of service or receipt of any
10 Motion for Summary Judgment and within 10 days of receipt of any order from a court setting
11 a case for trial.

12 105. In any subsequent administrative or judicial proceeding initiated by the United
13 States or the State for injunctive relief, recovery of response costs, or other appropriate relief
14 relating to the Site, OCC and Olin shall not assert, and may not maintain, any defense or
15 claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion,
16 claim-splitting, or other defenses based upon any contention that the claims raised by the
17 United States or the State in the subsequent proceeding were or should have been brought in
18 the instant case; provided, however, that nothing in this Paragraph affects the enforceability
19 of the Covenants Not to Sue set forth in Section XX (Covenants Not to Sue by Plaintiffs).

XXVI. ACCESS TO INFORMATION

1
2 106. OCC and Olin shall provide to EPA and the State, upon request, copies of all
3 documents and information within their possession or control or that of their contractors or
4 agents relating to activities at the Site or to the implementation of this Decree, including, but
5 not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts,
6 reports, sample traffic routing, correspondence, or other documents or information related to
7 the Work. OCC and Olin shall also make available to EPA and the State, for purposes of
8 investigation, information gathering, or testimony, their employees, agents, or representatives
9 with knowledge of relevant facts concerning the performance of the Work.

10 107. (a) OCC and Olin may assert business confidentiality claims covering part or
11 all of the documents or information submitted to Plaintiffs under this Decree to the extent
12 permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7),
13 and 40 C.F.R. § 2.203(b) and ECL Section 27-1311 and Article 6 of the New York Public
14 Officers Law, as applicable. Documents or information determined to be confidential by EPA
15 and the State will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B and State
16 law. If no claim of confidentiality accompanies documents or information when they are
17 submitted to EPA and the State, or if EPA and the State have notified OCC and Olin that the
18 documents or information are not confidential under the standards of Section 104(e)(7) of
19 CERCLA, or ECL Section 27-1311 and Article 6 of the New York Public Officers Law, the
20 public may be given access to such documents or information without further notice to OCC
21 and Olin.

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

11 108. No claim of confidentiality shall be made with respect to any data, including, but
12 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or
13 engineering data, or any other documents or information evidencing conditions at or around
14 the Site.

15 XXVII. RETENTION OF RECORDS

16 109. OCC and Olin shall preserve and retain all records and documents referenced
17 in Appendix B or compiled or utilized during the RI/FS that relate in any manner to the Site
18 or the performance of the Remedial Action or liability of any person for response actions
19 conducted and to be conducted at the Site, regardless of any corporate retention policy to the
20 contrary. OCC and Olin shall also instruct their contractors and agents to preserve all
21 documents, records, and information of whatever kind, nature or description referenced in

1 Appendix B or compiled or utilized during the RI/FS that relate in any manner to the Site,
2 including the performance of the Remedial Action and O & M. Obligations under this Section
3 to preserve and retain all documents, records, and information of whatever kind, nature or
4 description referenced in Appendix B or compiled or utilized during the RI/FS that relate in
5 any manner to the Site, including the performance of the Remedial Action and O & M do not
6 apply to the routine corporate practices relating to the destruction of draft documents,
7 provided, however, that all data and information are contained in the final documents that are
8 to be retained as records pursuant to this Section. Such records may be retained (with
9 duplicate backup copy held at a separate location) on any electronic or film media generally
10 in use by the government or the private sector which preserves the document and any notations
11 thereon. OCC and Olin agree not to object to the admissibility of any such document retained
12 by such media. The companies agree to provide EPA or the State with copies of such records
13 promptly upon request.

14 110. At any time following a period of 10 years after OCC's and Olin's receipt of
15 EPA's notification pursuant to Paragraph 20 of Section VI (Certification of Completion of the
16 Remedial Action), OCC and Olin may destroy any Site documents which are not referenced
17 in Appendix B or compiled or utilized during the RI/FS that relate in any manner to the Site,
18 including the performance of the Remedial Action and O & M. OCC and Olin shall notify the
19 United States and the State at least 90 days prior to the destruction of any such records or
20 documents, and, upon request by the United States or the State, OCC and Olin shall deliver
21 any such records or documents to EPA or the State. OCC and Olin may assert that certain
22 documents, records and other information are privileged under the attorney-client privilege or

1 any other privilege recognized by federal or State law. If OCC and Olin assert such a
2 privilege, they shall provide the Plaintiffs with the following: (1) the title of the document,
3 record, or information; (2) the date of the document, record, or information; (3) the name and
4 title of the author of the document, record, or information; (4) the name and title of each
5 addressee and recipient; (5) a description of the subject of the document, record, or
6 information; and (6) the privilege asserted by OCC and Olin. However, no documents,
7 reports or other information created or generated pursuant to the requirements of the Decree
8 shall be withheld on the grounds that they are privileged.

9 111. OCC and Olin each hereby certify individually that, to the best of its knowledge
10 and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or
11 otherwise disposed of any records, documents or other information relating to its potential
12 liability regarding the Site since notification of potential liability by the United States or the
13 State or the filing of suit against it regarding the Site and that it has fully complied with any
14 and all EPA and State requests for information.

15 XXVIII. NOTICES

16 112. Except as otherwise provided herein, whenever, under the terms of this Decree,
17 notice is required to be given or a document is required to be sent by one party to another, it
18 shall be directed to the individuals at the addresses specified below, unless otherwise agreed
19 to by the Parties. Written notice as specified herein shall constitute complete satisfaction of
20 any written notice requirement of the Decree with respect to the United States, EPA, DOJ,
21 the State, OCC and Olin, respectively.

As to the United States or DOJ:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-951)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Office of the Regional Counsel
New York/Caribbean Superfund Branch
United States Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007-1866

As to DOI:

Office of the Regional Solicitor
United States Department of Interior
One Gateway Center, Suite 612
Newton Corner, MA 02158-2868

As to NOAA:

NOAA Office of General Counsel, Northeast Region
One Blackburn Drive
Gloucester, MA 01930

As to the State:

Norman Spiegel
Assistant Attorney General
New York State Department of Law
120 Broadway
New York, NY 10271

Charles E. Sullivan, Jr., Director
New York State Department of Environmental Conservation,
Division of Environmental Enforcement
50 Wolf Road, Room 627
Albany, New York 12233-5500

1 As to OCC:

2
3 J. Alan Mack
4 Associate General Counsel
5 Occidental Chemical Corporation
6 Occidental Tower
7 P.O. Box 809050
8 Dallas, TX 75380

9
10 As to Olin:

11 David Cummings
12 Olin Corporation
13 P.O. Box 248
14 1186 Lower River Road NW
15 Charleston, TN 37310

16
17 **XXIX. RETENTION OF JURISDICTION**
18

19 113. This Court shall retain jurisdiction of this matter for the purpose of enforcing
20 the terms of this Decree and resolving all disputes thereunder.

21 **XXX. COMMUNITY RELATIONS**

22 114. OCC and Olin shall cooperate with EPA and the State in providing information
23 regarding the Site and the O&M to the public. As requested by EPA or the State, OCC and
24 Olin shall participate in the preparation of information for dissemination to the public and in
25 public meetings which may be held or sponsored by EPA or the State to explain activities at
26 or relating to the Site.

27 **XXXI. MODIFICATION**

28 115. The O&M Manual referred to in this Decree may be modified by agreement of
29 EPA, the State and OCC and Olin. All such modifications shall be made in writing.

1 116. Except as provided in Section VIII (Remedy Review), no material modifications
2 shall be made to this Decree without written notification to and written approval of the United
3 States, the State, OCC and Olin, and the Court. Modifications to the O & M that do not
4 materially alter the remedy may be made by written agreement between EPA, the State and
5 OCC and Olin. This Consent Decree may not be terminated except upon the consent of all
6 Parties and approval by the Court. In the event this Consent Decree is to be terminated, if
7 EPA or the State request, OCC and Olin shall execute and record an easement in accordance
8 with Paragraph 45(c), prior to the termination of this Consent Decree.

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

11 XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

12 118. The parties agree and acknowledge that final approval by the United States and
13 entry of this Decree is subject to Section 122(d)(2) of CERCLA, 42 U.S.C. §9622(d)(2), and
14 28 C.F.R. §50.7, the requirements of which are incorporated herein by reference. OCC and
15 Olin consent to the entry of this Decree without further notice; provided, however, that should
16 the United States withdraw from the Decree pursuant to this Paragraph, the Decree shall be
17 rendered void and the terms of the agreement may not be used as evidence in any litigation
18 between the Parties.

19 119. If for any reason this Court does not approve this Decree in the form presented,
20 this agreement is voidable at the sole discretion of any party and the terms of the agreement
21 may not be used as evidence in any litigation between the Parties.

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XXXIII. EFFECTIVE DATE

120. The effective date of this Decree shall be the date upon which it is entered by the Court.


XXXIV. SIGNATORIES/SERVICE

121. OCC and Olin have identified, 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 each with respect to all matters arising under or relating to this Decree. OCC and Olin hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.


The Parties herein, through their undersigned representatives, who are authorized to enter into this Decree on their behalf, sign as follows:

FOR THE UNITED STATES OF AMERICA

Dated:


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

Dated: May 18, 1999


PETER M. FLYNN
Senior Attorney
STEVEN R. BAER
Senior Counsel
Environmental Enforcement Section
P.O. Box 7611
Washington, DC 20044-7611

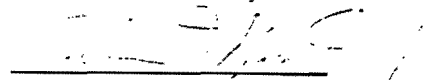
DENISE E. O'DONNELL
United States Attorney

Dated: July 19, 1999



MARY K. ROACH
Assistant United States Attorney
Western District of New York
138 Delaware Avenue,
Buffalo, NY 14202


Dated:



JEANNE M. FOX
Regional Administrator
Region II
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Dated:

April 27, 1999



GEORGE A. SHANAHAN
Assistant Regional Counsel
Region II
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

FOR OCCIDENTAL CHEMICAL CORPORATION

PIPER & MARBURY L.L.P.
Anthony L. Young
1200 Nineteenth Street, N.W.
Washington, D.C. 20036-2430

and

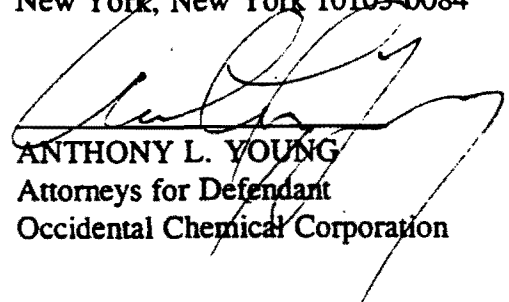
PHILLIPS, LYTLE, HITCHCOCK,
BLAINE & HUBER
Paul B. Zuydhoek
3400 Marine Midland Center
Buffalo, New York 14203

and

PHILLIPS NIZER BENJAMIN
KRIM & BALLON LLP
Martin B. Wasser
666 Fifth Avenue
New York, New York 10103-0084

Dated:

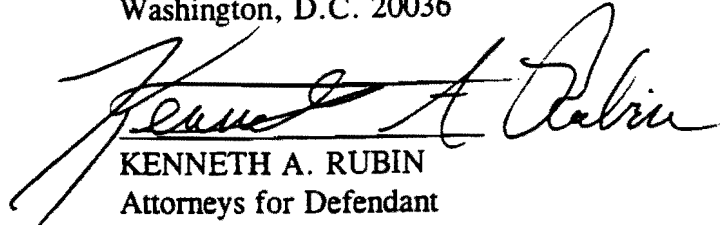
April 26, 1999


ANTHONY L. YOUNG
Attorneys for Defendant
Occidental Chemical Corporation

FOR OLIN CORPORATION

MORGAN, LEWIS & BOCKIUS L.L.P.
1800 M Street, N.W.
Suite 800 North
Washington, D.C. 20036

Dated: *April 27, 1999*


KENNETH A. RUBIN
Attorneys for Defendant
Olin Corporation

So Ordered and Adjudged:

UNITED STATES DISTRICT JUDGE

Dated: _____