IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA Plaintiff, v. SHIELDALLOY METALLURGICAL CORPORATION, Defendant.	)	CIVIL ACTION NO. 16-8418

CONSENT DECREE

TABLE OF CONTENTS

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a Complaint in this matter against Shieldalloy Metallurgical Corporation ("SMC") pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its Complaint seeks, *inter alia*: (1) reimbursement of costs incurred by EPA and the Department of Justice ("DOJ") for response actions at the Shieldalloy Metallurgical Corporation Superfund Site in Newfield, New Jersey ("Site"), together with accrued interest; and (2) performance of response actions by the defendant at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA formally notified the State of New Jersey (the "State") on June 3, 2015 (as to Operable Unit 2) and on September 30, 2015 (as to Operable Unit 1), of negotiations with a potentially responsible party ("PRP") regarding the implementation of the remedial actions for these respective Operable Units for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. Until 2010, the NJDEP held lead agency oversight responsibility for the Site, pursuant to the terms and conditions of a February 1, 2006 Administrative Consent Order ("2006 ACO") among the NJDEP, SMC and TRC, as well as prior ACOs between the NJDEP and SMC alone. By letter dated September 8, 2008, EPA advised SMC that it was taking over from the NJDEP lead agency responsibility for the Site under CERCLA. This transfer of lead agency responsibility was formalized in an Administrative Settlement Agreement and Order on Consent for Remedial Investigation/ Feasibility Study and Remedial Design among EPA, SMC and TRC dated April 28, 2010 ("2010 Administrative Settlement Agreement").

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA formally notified the National Oceanic and Atmospheric Administration ("NOAA") and the Department of the Interior ("DOI") on June 3, 2015, and again on January 21, 2016, of negotiations with the PRP regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

F. The Settling Party and TRC entered into a contract effective January 11, 2006 by which TRC agreed to assume cleanup liability held by the Settling Party with respect to the Site subject to certain exceptions and exclusions. Accordingly, while TRC is not a party to this Consent Decree, the United States recognizes that it is the Settling Party's intent that TRC will conduct and carry out certain actions pursuant to this Consent Decree.

G. The Settling Party admits no liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint, nor does it acknowledge that the release or threatened

release of hazardous substances at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

H. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 21, 1984, 40 Fed. Reg. 3070.

I. In response to a release or a substantial threat of a release of hazardous substances at or from the Site, EPA commenced a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

J. Operable Unit 1 ("OU1") at the Site concerns the remediation of non-perchlorate contaminated groundwater. EPA completed the OU1 Supplemental Remedial Investigation ("RI") Report in March 2014, and EPA completed the OU1 Focused Feasibility Study ("FS") Report in March 2015.

K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the OU1 FS and of the proposed plan for OU1 remedial action on July 30, 2015, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which EPA Region 2 based the selection of the response action.

L. The decision by EPA on the remedial action to be implemented at the Site for OU1 is embodied in a final Record of Decision Amendment ("OU1 ROD"), executed on September 30, 2015, as to which the State has given its concurrence. The OU1 ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

M. Operable Unit 2 ("OU2") at the Site concerns the remediation of non-perchlorate soils contamination and certain sediments. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS for OU2 and of the proposed plan for remedial action for OU2 on June 27, 2014, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which EPA Region 2 based the selection of the response action.

N. The decision by EPA on the remedial action to be implemented at the Site for OU2 is embodied in a final OU2 ROD, executed on September 25, 2014, as to which the State has given its concurrence. The OU2 ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

O. EPA anticipates that there will be an OU3 ROD addressing perchlorate contamination at the Site. Pursuant to the 2010 Administrative Settlement Agreement, the

Settling Party is solely responsible for conducting a remedial investigation and feasibility study with respect to OU3. OU3 is not the subject of this Consent Decree.

P. EPA, the Settling Party, and TRC entered into the 2015 Administrative Settlement Agreement pursuant to which the Settling Party and TRC agreed to implement the OU2 RD pending the negotiation and execution of this Consent Decree.

Q. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Party if conducted in accordance with this Consent Decree and its appendices.

R. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the OU1 ROD and the OU2 ROD and the Work to be performed by the Settling Party shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

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

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1367, and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Party. Solely for the purposes of this Consent Decree and the underlying complaints, the Settling Party waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The Settling Party shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon the Settling Party and each of their respective successors, and assigns. Any change in ownership or corporate or other legal status of the Settling Party including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Party's responsibilities under this Consent Decree.

3. The Settling Party shall provide a copy of this Consent Decree to each contractor hired to perform the Work and to each person representing the Settling Party with respect to the Site or the Work, including but not limited to TRC, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The Settling Party or its contractors shall provide written notice of the Consent Decree to all

subcontractors hired to perform any portion of the Work. The Settling Party shall nonetheless be responsible for ensuring that the contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor, including TRC, shall be deemed to be in a contractual relationship with the Settling Party within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

"2010 Administrative Settlement Agreement" shall mean the Administrative Settlement Agreement and Order on Consent for Remedial Investigation/Feasibility Study and Remedial Design, Index Number 02-2010-2017, entered into on April 28, 2010.

"2015 Administrative Settlement Agreement" shall mean the Administrative Settlement Agreement and Order on Consent for Remedial Design, Operable Unit 2, Index Number CERCLA-02-2014-2029 entered into on March 10, 2015.

"Affected Property" shall mean all real property at the Site and any other real property where EPA determines, at any time, that access, land, water, or other resource use restrictions, and/or Institutional Controls are needed to implement the Remedial Action.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Consent Decree" shall mean this consent decree and all appendices attached hereto (listed in Section XXII). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

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

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Eastern Storage Area" shall mean a portion of the SMC Facility depicted on the Map attached as Appendix D. The Eastern Storage Area is that area of the Site where the Settling Party will cap 1.3 acres of soil contaminated by chromium and vanadium.

"Effective Date" shall mean the date upon which the approval of this Consent Decree is recorded on the Court's docket.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to ¶ 11 (Emergencies and Releases), ¶ 12 (Community Involvement) (including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e)), ¶ 25 (Access to Financial Assurance), Section VII (Remedy Review), Section VIII (Property Requirements) (including the cost of attorney time and any monies paid to secure or enforce access or land, water, or other resource use restrictions and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including the amount of just compensation), and Section XIII (Dispute Resolution), and all litigation costs. Future Response Costs shall also include all Interim Response Costs, all Interest on those Past Response Costs the Settling Party has agreed to pay under this Consent Decree that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from August 1, 2016 through the Effective Date, and Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

"Hudson Branch" shall mean the stream and its tributary that flow though the southern portion of the Site as depicted on the map attached as Appendix D.

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

"Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at http://www2.epa.gov/superfund/superfund-interest-rates.

"Interim Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, (a) paid by the United States in connection with the Site from August 1, 2016 through the Effective Date, or (b) incurred prior to the Effective Date but paid after that date, *provided however*, that such Interim Response Costs shall not include costs incurred in connection with OU3.

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

"Natural Resource Damages" means damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such damages, as provided in Section 107(a)(4)(C) of CERCLA, 42 U.S.C. § 9607(a)(4)(C).

"Natural Resources" means "natural resources" as that term is defined in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

"NJDEP" shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.

"NR Trustee(s)" means the designated federal officials who may act on behalf of the public as trustees for the Natural Resources regarding the Site, namely the National Oceanic and Atmospheric Administration and the Department of the Interior represented by the Fish and Wildlife Service as the federal Trustees for Natural Resources regarding the Site.

"Non-Settling Owner" shall mean any person, other than the Settling Party, that owns or controls any Affected Property. The clause "Non-Settling Owner's Affected Property" means Affected Property owned or controlled by a Non-Settling Owner.

"Operation and Maintenance" or "O&M" shall mean all activities required to operate, maintain, and monitor the effectiveness of the RA as specified in the SOW or any EPA-approved O&M Plan.

"OU1 ROD" shall mean the EPA Record of Decision Amendment relating to Operable Unit 1 at the Site signed on September 30, 2015, by the Regional Administrator, EPA Region 2, or her delegate, and all attachments thereto. The OU1 ROD is attached as Appendix A.

"OU2 ROD" shall mean the EPA Record of Decision relating to Operable Unit 2 at the Site signed on September 25, 2014 by the Regional Administrator, EPA Region 2, or her delegate, and all attachments thereto. The OU2 ROD is also attached in Appendix A.

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

"Parties" shall mean the United States and SMC.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through July 31, 2016, plus Interest on all such costs that has accrued pursuant to 42 U.S.C. § 9607(a) through such date, *provided, however,* that "Past Response Costs" shall not include any response costs which the Settling Party is obligated to pay, and those costs that the Settling Party, or TRC, on behalf of the Settling Party, in fact has paid, pursuant to the terms of the 2010 Administrative Settlement Agreement and the 2015 Administrative Settlement Agreement.

"Performance Standards" or "PS" shall mean the cleanup levels and other measures of achievement of the remedial action objectives, as set forth in the OU1 ROD or OU2 ROD, whichever is applicable.

"Plaintiff" shall mean the United States.

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

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Remedial Action" or "RA" shall mean the remedial actions selected in the OU1 ROD and OU2 ROD.

"Remedial Design" or "RD" shall mean those activities to be undertaken by the Settling Party to develop final plans and specifications for the RA as stated in the SOW.

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

"Settling Party" shall mean SMC.

"Shieldalloy Metallurgical Corporation Superfund Site Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Shieldalloy Metallurgical Corporation Superfund Site Future Response Costs Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Site" shall mean the Shieldalloy Metallurgical Corporation Superfund Site, located in the Borough of Newfield, Gloucester County, New Jersey and the City of Vineland, Cumberland County, New Jersey consisting of approximately 87.5 acres, as described in the OU1 and OU2 RODs and as depicted generally on the map attached as Appendix C. The Site encompasses the SMC Facility and a portion of the Hudson Branch.

"SMC" shall mean Shieldalloy Metallurgical Corporation.

"SMC Facility" shall mean that portion of the Site consisting of approximately 67.5 acres located at 35 South West Boulevard, in the Borough of Newfield, Gloucester County, New Jersey and the City of Vineland, Cumberland County, New Jersey. The SMC Facility is depicted on the map attached as Appendix D.

"State" shall mean the State of New Jersey.

"Statement of Work" or "SOW" shall mean the document describing the activities for OU1 and OU2 that the Settling Party must perform to implement the RD, the RA, and O&M regarding the Site. The Statement of Work for OU1 and OU2 is attached as Appendix B.

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

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

"TRC" shall mean, collectively, TRC Companies, Inc. and TRC Environmental Corporation, both Delaware corporations, with their principal office located at 21 Griffin Road North, Windsor, Connecticut 06095. TRC Environmental Corporation is a wholly-owned subsidiary of TRC Companies, Inc.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

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

"Work" shall mean all activities and obligations that the Settling Party is required to perform under this Consent Decree, except the activities required under Section XIX (Retention of Records).

V. GENERAL PROVISIONS

5. **Objectives of the Parties**. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the implementation of response actions at the Site by the Settling Party, to pay response costs of the Plaintiff, and to resolve the claims of Plaintiff against the Settling Party as provided in this Consent Decree.

6. **Commitments by the Settling Party**. The Settling Party shall finance and perform the Work in accordance with this Consent Decree, the OU1 ROD and the OU2 ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by the Settling Party and approved by EPA pursuant to this Consent Decree. The Settling Party shall pay the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

7. **Compliance with Applicable Law**. Nothing in this Consent Decree limits the Settling Party's obligations to comply with the requirements of all applicable federal and state laws and regulations. The Settling Party must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the OU1 ROD and the OU2 ROD and the SOW. The activities conducted pursuant to this Consent Decree, if

approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. **Permits.**

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal, state, or local permit or approval, the Settling Party shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

VI. PERFORMANCE OF THE WORK

9. **Coordination and Supervision.**

a. **Project Coordinators.**

(1) The Settling Party's Project Coordinator must have sufficient technical expertise to coordinate the Work. The Settling Party's Project Coordinator may not be an attorney representing the Settling Party in this matter and may not act as the Supervising Contractor. The Settling Party's Project Coordinator may assign other representatives, including other contractors, to assist in coordinating the Work.

(2) EPA shall designate and notify the Settling Party of EPA's Project Coordinator and Alternate Project Coordinator. EPA may designate other representatives, which may include its employees, contractors and/or consultants, to oversee the Work. EPA's Project Coordinator/Alternate Project Coordinator will have the same authority as a remedial project manager and/or an on-scene coordinator, as described in the NCP. This includes the authority to halt the Work and/or to conduct or direct any necessary response action when he or she determines that conditions at the Site constitute an emergency or may present an immediate threat to public health or welfare or the environment due to a release or threatened release of Waste Material.

(3) The Settling Party's Project Coordinator shall meet regularly with EPA's Project Coordinator as directed by EPA.

b. **Supervising Contractor**. The Settling Party's proposed Supervising Contractor must have sufficient technical expertise to supervise the Work and a quality assurance system that complies with ANSI/ASQC E4-2004, Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use (American National Standard).

c. **Procedures for Disapproval/Notice to Proceed**.

(1) Except as otherwise provided in ¶ 9.c(4) below, the Settling Party shall designate, and notify EPA, within 10 days after the Effective Date, of the names, contact information, and qualifications of the Settling Party's proposed Project Coordinator and Supervising Contractor.

(2) Except as otherwise provided in ¶ 9.c(4) below, EPA, after a reasonable opportunity for review and comment by the State, shall issue notices of disapproval and/or authorizations to proceed regarding the proposed Project Coordinator and Supervising Contractor, as applicable. If EPA issues a notice of disapproval, the Settling Party shall, within 30 days, submit to EPA a list of supplemental proposed Project Coordinators and/or Supervising Contractors, as applicable, including a description of the qualifications of each. EPA shall issue a notice of disapproval or authorization to proceed regarding each supplemental proposed coordinator and/or contractor. The Settling Party may select any coordinator/contractor covered by an authorization to proceed and shall, within 21 days, notify EPA of the Settling Party's selection.

(3) The Settling Party may change its Project Coordinator and/or Supervising Contractor, as applicable, by following the procedures of ¶¶ 9.c(1) and 9.c(2).

(4) Notwithstanding the procedures of ¶¶ 9.c(1) through 9.c(3), the Settling Party has proposed, and EPA has authorized the Settling Party to proceed, regarding the following Project Coordinator and Supervising Contractor: TRC is the Supervising Contractor and TRC's designee and employee, Patrick Hansen, P.E. is the Project Coordinator.

10. **Performance of Work in Accordance with SOW**. The Settling Party shall (a) perform the RA; and (b) operate, maintain, and monitor the effectiveness of the RA; all in accordance with the SOW and all EPA-approved, conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the Consent Decree or SOW shall be subject to approval by EPA in accordance with ¶ 5.6 (Approval of Deliverables) of the SOW.

11. **Emergencies and Releases**. The Settling Party shall comply with the emergency and release response and reporting requirements under the Emergency Response and Reporting) provisions of the SOW. Subject to Section XV (Covenants by Plaintiff), nothing in this Consent Decree, including the Emergency Response and Reporting provisions of the SOW, limits any authority of Plaintiff: (a) to take all appropriate action to protect human health and the

environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site. If, due to the Settling Party's failure to take appropriate response action under the Emergency Response and Reporting provisions of the SOW, EPA takes such action instead, the Settling Party shall reimburse EPA under Section X (Payments for Response Costs) for all costs of the response action.

12. **Community Involvement**. If requested by EPA, the Settling Party shall conduct community involvement activities under EPA's oversight as provided for in, and in accordance with Section 2 (Community Involvement) of the SOW. Costs incurred by the United States under this Section constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

13. **Modification of SOW or Related Deliverables**.

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in deliverables developed under the SOW in order to achieve and/or maintain the Performance Standards or to carry out and maintain the effectiveness of the RA, and such modification is consistent with the Scope of the Remedy set forth in the SOW, then EPA may notify the Settling Party of such modification. If the Settling Party objects to the modification it may, within 30 days after EPA's notification, seek dispute resolution under Section XIII.

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if the Settling Party invokes dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and the Settling Party shall implement all work required by such modification. The Settling Party shall incorporate the modification into the deliverables required under the SOW, as appropriate.

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

14. Nothing in this Consent Decree, the SOW, or any deliverable required under the SOW constitutes a warranty or representation of any kind by the Plaintiff that compliance with the work requirements set forth in the SOW or related deliverables will achieve the Performance Standards.

VII. REMEDY REVIEW

15. **Periodic Review**. The Settling Party shall conduct, in accordance with the Periodic Review Support Plan provisions of the SOW, studies and investigations to support EPA's reviews under Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and applicable regulations, of whether the RA is protective of human health and the environment.

VIII. PROPERTY REQUIREMENTS

Agreements Regarding Access and Non-Interference.

16. The Settling Party shall, with respect to any Non-Settling Owner's Affected Property, use best efforts to secure from such Non-Settling Owner an agreement, enforceable by the Settling Party and by the Plaintiff, providing that such Non-Settling Owner shall (and the Settling Party, with respect to the Settling Party's Affected Property, shall): (i) Provide Plaintiff and the Settling Party, and their representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Consent Decree, including those listed in ¶ 16.a. (Access Requirements); and (ii) refrain from using such Affected Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action including the restrictions listed in ¶ 16.b. (Land, Water, or Other Resource Use Restrictions).

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

(1) Monitoring the Work;

(2) Verifying any data or information submitted to the United States;

(3) Conducting investigations regarding contamination at or near the Site;

(4) Obtaining samples;

(5) Assessing the need for, planning, or implementing additional response actions at or near the Site;

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved construction quality assurance quality control plan as provided in the SOW;

(7) Implementing the Work pursuant to the conditions set forth in ¶ 61 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Settling Party or its agents, consistent with Section XVIII (Access to Information);

(9) Assessing the Settling Party's compliance with the Consent Decree;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions and Institutional Controls.

b. **Land, Water, or Other Resource Use Restrictions**. The following is a list of land, water, or other resource use restrictions applicable to the Affected Property:

(1) Prohibiting residential use of the SMC Facility;

(2) Ensuring that existing building caps, paving caps, soil caps, and vegetative caps are not disturbed, i.e., by paving the former footprint of any buildings that are demolished;

(3) Requiring inspection and maintenance of paving caps, soil caps, vegetative caps, and fencing;

(4) Instituting a management plan to require proper handling and disposal of contaminated soil and sediment, if any future development involves disturbance of the subsurface soil; and

(5) Instituting a management plan to require that workers wear appropriate protective equipment when handling contaminated soil and sediment.

17. **Best Efforts**. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of the Settling Party would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements. For purposes of gaining access to property, "best efforts" shall presumptively include commencing and prosecuting an action to obtain access and other allowable relief under N.J.S.A. 58:10B-16 of New Jersey's Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq. If the Settling Party is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify the United States, and include a description of the steps taken to comply with the requirements. If the United States deems it appropriate, it may assist the Settling Party or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section X (Payments for Response Costs).

18. **Notice to Successors-in-Title.**

a. The Settling Party shall, within 15 days after the Effective Date, submit for EPA approval a notice to be filed regarding the Settling Party's Affected Property in the appropriate land records. The notice must: (1) include a proper legal description of the Affected Property; (2) provide notice to all successors-in-title: (i) that the Affected Property is part of, or related to, the Site; (ii) that EPA has selected a remedy for the Site; and (iii) that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy; and (3) identify the U.S. District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court.

The Settling Party shall record the notice within 10 days after EPA's approval of the notice and submit to EPA, within 10 days thereafter, a certified copy of the recorded notice.

b. The Settling Party shall, prior to entering into a contract to Transfer the Settling Party's Affected Property, or 60 days prior to transferring the Settling Party's Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA has selected a remedy regarding the Site, that potentially responsible parties have entered into a Consent Decree requiring implementation of such remedy, and that the United States District Court has entered the Consent Decree (identifying the name and civil action number of this case and the date the Consent Decree was entered by the Court); and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the notice that it provided to the proposed transferee.

19. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, the Settling Party shall continue to comply with its obligations under the Consent Decree, including the obligation to secure access and ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property and to implement, maintain, monitor, and report on Institutional Controls.

20. Notwithstanding any provision of the Consent Decree, Plaintiff retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions and Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

IX. FINANCIAL ASSURANCE

21. In order to ensure completion of the Work, the Settling Party shall secure financial assurance, initially in the amount of $5,635,000.00 ("Estimated Cost of the Work"), for the benefit of EPA. The financial assurance must be one or more of the mechanisms listed in a. through f. below, in a form substantially similar to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at http://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. The Settling Party may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

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

b. An irrevocable letter of credit, payable to or at the direction of EPA, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

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

d. A policy of insurance that provides EPA with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by the Settling Party that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee, accompanied by a standby funding commitment, which obligates the Settling Party to pay funds to or at the direction of EPA, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of EPA by one of the following: (1) a direct or indirect parent company of the Settling Party; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with the Settling Party; provided, however, that any company providing such a guarantee must demonstrate to EPA's satisfaction that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee.

22. The Settling Party has selected, and EPA has found satisfactory, as an initial financial assurance an insurance policy prepared in accordance with ¶ 21. Within 30 days after the Effective Date, or 30 days after EPA's approval of the form and substance of the Settling Party's financial assurance, whichever is later, the Settling Party shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the United States, and to EPA as specified in Section XX (Notices and Submissions).

23. If the Settling Party provides financial assurance by means of a demonstration or guarantee under ¶ 21.e or 21.f, the Settling Party shall also comply and shall ensure that its guarantors comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including, but not limited to: (a) the initial submission to EPA of required documents from the relevant Settling Party's chief financial officer and independent certified public accountant no later than 30 days after the Effective Date; (b) the annual resubmission of such documents within 90 days after the close of the relevant Settling Party's fiscal year; and (c) the notification of EPA no later than 30 days, in accordance with ¶ 24, after the relevant Settling Party determines that it no longer satisfies the relevant financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1). The Settling Party agrees that EPA may also, based on a belief that the Settling Party may no longer meet the financial test requirements of ¶ 21.e or 21.f, require reports of financial condition at any time from the Settling Party in addition to those

specified in this Paragraph. For purposes of this Section, references in 40 C.F.R. Part 264, Subpart H, to: (1) the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" include the Estimated Cost of the Work; (2) the phrase "the sum of the current closure and post-closure cost estimates and the current plugging and abandonment cost estimates" includes the sum of all environmental obligations (including obligations under CERCLA, RCRA, and any other federal, state, or tribal environmental obligation) guaranteed by such company or for which such company is otherwise financially obligated in addition to the Estimated Cost of the Work under this Consent Decree; (3) the terms "owner" and "operator" include the Settling Party making a demonstration or obtaining a guarantee under ¶ 21.e or 21.f; and (4) the terms "facility" and "hazardous waste management facility" include the Site.

24. The Settling Party shall diligently monitor the adequacy of the financial assurance. If the Settling Party becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, the Settling Party shall notify EPA of such information within 7 days. If EPA determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, EPA will notify the Settling Party of such determination. The Settling Party shall, within 30 days after notifying EPA or receiving notice from EPA under this Paragraph, secure and submit to EPA for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. EPA may extend this deadline for such time as is reasonably necessary for the Settling Party, in the exercise of due diligence, to secure and submit to EPA a proposal for a revised or alternative financial assurance mechanism, not to exceed 60 days. The Settling Party shall follow the procedures of ¶ 26 (Modification of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. The Settling Party's inability to secure and submit to EPA financial assurance in accordance with this Section shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of the Settling Party to complete the Work in accordance with the terms of this Consent Decree.

25. **Access to Financial Assurance**.

a. If EPA issues a notice of implementation of a Work Takeover under ¶ 61.b, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, EPA is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with ¶ 25.d.

b. If EPA is notified by the issuer of a financial assurance mechanism that it intends to cancel such mechanism, and the Settling Party fails to provide an alternative financial assurance mechanism in accordance with this Section at least 30 days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with ¶ 25.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under ¶ 61.b, either: (1) EPA is unable for any reason to promptly secure the resources guaranteed

under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is provided under ¶ 21.e or 21.f, then EPA may demand an amount, as determined by EPA, sufficient to cover the cost of the remaining Work to be performed. The Settling Party shall, within 10 days of such demand, pay the amount demanded as directed by EPA.

d. Any amounts required to be paid under this ¶ 25 shall be, as directed by EPA: (i) paid to EPA in order to facilitate the completion of the Work by EPA or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to EPA, EPA may deposit the payment into the EPA Hazardous Substance Superfund or into the Shieldalloy Metallurgical Corporation Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

e. All EPA Work Takeover costs not paid under this ¶ 25 must be reimbursed as Future Response Costs under Section X (Payments for Response Costs).

26. **Modification of Amount, Form, or Terms of Financial Assurance**. The Settling Party may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to EPA in accordance with ¶ 22, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. EPA will notify the Settling Party of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. The Settling Party may reduce the amount of the financial assurance mechanism only in accordance with: (a) EPA's approval; or (b) if there is a dispute, the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution). Any decision made by EPA on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by the Settling Party pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. Within 30 days after receipt of EPA's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, the Settling Party shall submit to EPA documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with ¶ 22.

27. **Release, Cancellation, or Discontinuation of Financial Assurance**. The Settling Party may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if EPA issues a "Certification of Work Completion" as provided in the SOW; (b) in accordance with EPA's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation or discontinuance of any financial assurance, in accordance with the agreement, final administrative decision, or final judicial decision resolving such dispute under Section XIII (Dispute Resolution).

X. PAYMENTS FOR RESPONSE COSTS

28. **Payment by the Settling Party for United States Past Response Costs.**

a. Within 30 days after the Effective Date, the Settling Party shall pay to EPA $505,000.00 in payment for Past Response Costs. Payment shall be made in accordance with ¶ 30.a (instructions for past response cost payments).

b. **Deposit of Past Response Costs Payment.** Of the total amount to be paid by the Settling Party pursuant to ¶ 28.a, 100% shall be deposited by EPA in the Shieldalloy Metallurgical Corporation Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

29. **Payments by the Settling Party for Future Response Costs.** The Settling Party shall pay to EPA all Future Response Costs not inconsistent with the NCP.

a. **Periodic Bills.** On a periodic basis, EPA will send the Settling Party a bill requiring payment that includes a SCORPIOS Report, which includes direct and indirect costs incurred by EPA, its contractors, subcontractors, and DOJ. The Settling Party shall make all payments within 30 days after the Settling Party's receipt of each bill requiring payment, except as otherwise provided in ¶ 31, in accordance with ¶ 30.b (instructions for future response cost payments).

b. **Deposit of Future Response Costs Payments.** Of the total amount to be paid by the Settling Party pursuant to ¶ 29.a, 100% shall be deposited by EPA in the Shieldalloy Metallurgical Corporation Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided, however, that EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the Shieldalloy Metallurgical Corporation Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by the Settling Party pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

30. **Payment Instructions for the Settling Party as to EPA's Response Costs.**

a. **Past Response Costs Payments and Future Response Costs Prepayments.**

(1) The Financial Litigation Unit (FLU) of the United States Attorney's Office for the District of New Jersey shall provide the Settling Party, in accordance with ¶ 83, with instructions regarding making payments to DOJ on behalf of EPA. The instructions must include a Consolidated Debt Collection System (CDCS) number to identify payments made under this Consent Decree.

(2) For all payments subject to this ¶ 30.a, the Settling Party shall make such payment by Fedwire Electronic Funds Transfer (EFT) / at https://www.pay.gov] to the U.S. DOJ account, in accordance with the instructions provided under ¶ 30.a(1), and including references to the CDCS Number, Site/Spill ID Number 02 – B7, and DJ Number 90-11-3-1285.

(3) For each payment made under this ¶ 30.a, the Settling Party shall send notices, including references to the CDCS, Site/Spill ID, and DJ numbers, to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 83.

b. **Future Response Costs Payments and Stipulated Penalties.**

(1) For all payments subject to this ¶ 30.b, the Settling Party shall make such payment by Fedwire EFT, referencing the Site/Spill ID and DJ numbers. The Fedwire EFT payment must be sent as follows:

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

For all payments made under this ¶ 30.b, the Settling Party must include references to the Site/Spill ID and DJ numbers. At the time of any payment required to be made in accordance with ¶ 30.b, the Settling Party shall send notices that payment has been made to the United States, EPA, and the EPA Cincinnati Finance Center, all in accordance with ¶ 83. All notices must include references to the Site/Spill ID and DJ numbers.

31. **Contesting Future Response Costs.** The Settling Party may submit a Notice of Dispute, initiating the procedures of Section XIII (Dispute Resolution), regarding any Future Response Costs billed under ¶ 29 (Payments by the Settling Party for Future Response Costs) if it determines that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such Notice of Dispute shall be submitted in writing within 30 days after receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) pursuant to Section XX (Notices and Submissions). Such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If the Settling Party submits a Notice of Dispute, the Settling Party shall, within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the United States, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Party shall send to the United States, as provided in Section XX (Notices and Submissions), a copy of the

transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the United States prevails in the dispute, the Settling Party shall pay the sums due (with accrued interest) to the United States within 7 days after the resolution of the dispute. If the Settling Party prevails concerning any aspect of the contested costs, the Settling Party shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States within 7 days after the resolution of the dispute. The Settling Party shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with ¶ 30.b (instructions for future response cost payments). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Party's obligation to reimburse the United States for its Future Response Costs.

32. **Interest**. In the event that any payment for Past Response Costs or for Future Response Costs required under this Section is not made by the date required, the Settling Party shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Party's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of the Settling Party's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to ¶ 48 (Stipulated Penalty Amounts – Work).

XI. INDEMNIFICATION AND INSURANCE

33. **The Settling Party's Indemnification of the United States.**

a. The United States does not assume any liability by entering into this Consent Decree or by virtue of any designation of the Settling Party as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). The Settling Party shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Settling Party, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on the Settling Party' behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of the Settling Party as EPA's authorized representative under Section 104(e) of CERCLA. Further, the Settling Party agrees to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of the Settling Party, its respective officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities

pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of the Settling Party in carrying out activities pursuant to this Consent Decree. Neither the Settling Party, nor any such contractor shall be considered an agent of the United States.

b. The United States shall give the Settling Party notice of any claim for which the United States plans to seek indemnification pursuant to this ¶ 33, and shall consult with the Settling Party prior to settling such claim.

34. The Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between the Settling Party and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, the Settling Party shall indemnify, save and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Settling Party and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

35. **Insurance**. No later than 15 days before commencing any on-site Work, the Settling Party or its designee, TRC, shall secure, and shall maintain until the first anniversary after issuance of the latest of EPA's "Certification of RA Completion" pursuant to the SOW, commercial general liability insurance with limits of $10 million, for any one occurrence, and automobile liability insurance with limits of $5 million, combined single limit, naming the United States as an additional insured with respect to all liability arising out of the activities performed by or on behalf of the Settling Party pursuant to this Consent Decree. The insurance limits required pursuant to this Paragraph may be satisfied via a combination of primary and excess insurance coverage. In addition, for the duration of this Consent Decree, the Settling Party shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of the Settling Party in furtherance of this Consent Decree. Prior to commencement of the Work, the Settling Party shall provide to EPA certificates of such insurance and a copy of each insurance policy. The Settling Party shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If the Settling Party demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, the Settling Party need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XII. FORCE MAJEURE

36. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Party, of any entity controlled by the Settling Party, or of the Settling Party's contractors that delays or prevents the performance of

any obligation under this Consent Decree despite the Settling Party's best efforts to fulfill the obligation. The requirement that the Settling Party exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

37. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which the Settling Party intends or may intend to assert a claim of force majeure, the Settling Party shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Emergency and Remedial Response Division, EPA Region 2, within 24 hours of when the Settling Party first knew that the event might cause a delay. Within 7 days thereafter, the Settling Party shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Party's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of the Settling Party, such event may cause or contribute to an endangerment to public health or welfare, or the environment. The Settling Party shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. The Settling Party shall be deemed to know of any circumstance of which the Settling Party, any entity controlled by the Settling Party, or the Settling Party's contractors or subcontractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude the Settling Party from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under ¶ 36 and whether the Settling Party has exercised its best efforts under ¶ 36, EPA may, in its unreviewable discretion, excuse in writing the Settling Party's failure to submit timely or complete notices under this Paragraph.

38. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify the Settling Party in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify the Settling Party in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

39. If the Settling Party elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution) regarding EPA's decision, it shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the Settling Party shall have the burden of

demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that the Settling Party complied with the requirements of ¶¶ 36 and 37. If the Settling Party carries this burden, the delay at issue shall be deemed not to be a violation by the Settling Party of the affected obligation of this Consent Decree identified to EPA and the Court.

40. The failure by EPA to timely complete any obligation under the Consent Decree or under the SOW is not a violation of the Consent Decree, provided, however, that if such failure prevents the Settling Party from meeting one or more deadlines in the SOW, the Settling Party may seek relief under this Section.

XIII. DISPUTE RESOLUTION

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

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

43. **Statements of Position.**

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 30 days after the conclusion of the informal negotiation period, the Settling Party invoke the formal dispute resolution procedures of this Section by serving on the United States a single written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Settling Party. The Statement of Position shall specify the Settling Party's position as to whether formal dispute resolution should proceed under ¶ 44 (Record Review) or ¶ 45.

b. Within 30 days after receipt of the Settling Party's Statement of Position, EPA will serve on the Settling Party its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under ¶ 44 (Record Review) or ¶ 45. Within 14 days after receipt of EPA's Statement of Position, the Settling Party may submit a single Reply.

c. If there is disagreement between EPA, on the one hand, and the Settling Party on the other, as to whether dispute resolution should proceed under ¶ 44 (Record Review) or 45, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Party ultimately appeals to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in ¶¶ 44 and 45.

44. **Record Review**. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by the Settling Party regarding the validity of the RODs' provisions.

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

b. The Director of the Emergency and Remedial Response Division, EPA Region 2, will issue a final administrative decision resolving the dispute based on the administrative record described in ¶ 44.a. This decision shall be binding upon the Settling Party, subject only to the right to seek judicial review pursuant to ¶¶ 44.c and 44.d.

c. Any administrative decision made by EPA pursuant to ¶ 44.b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Party with the Court and served on all Parties within 10 days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Settling Party's motion.

d. In proceedings on any dispute governed by this Paragraph, the Settling Party shall have the burden of demonstrating that the decision of the Emergency and Remedial Response Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to ¶ 44.a.

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

a. The Director of the Emergency and Remedial Response Division, EPA Region 2, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under ¶ 43. The Emergency and Remedial Response Division Director's decision shall be binding on the Settling Party unless, within 10 days after receipt of the decision, the Settling Party files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the Settling Party's motion.

b. Notwithstanding ¶ R (CERCLA § 113(j) record review of RODs and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

46. The invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of the Settling Party under this Consent Decree, except as provided in ¶ 31 (Contesting Future Response Costs), as agreed by EPA, or as determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute, as provided in ¶ 54. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Party does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XIV (Stipulated Penalties).

XIV. STIPULATED PENALTIES

47. The Settling Party shall be liable for stipulated penalties in the amounts set forth in ¶¶ 48 and 49 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XII (Force Majeure). "Compliance" by the Settling Party shall include completion of all activities and obligations, including payments, required under this Consent Decree, or any deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

48. Stipulated Penalty Amounts - Work (Including Payments and Excluding Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in ¶ 48.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	$1,500
15th through 30th day	$3,500
31st day and beyond	$6,000

b. Compliance Milestones.

(1) Payment of Past Response Costs;

(2) Payment of Future Response Costs – 30 days after receipt of bill and SCORPIOS Report from EPA; and

(3) Establishment and maintenance of financial assurance in compliance with the timelines and other substantive and procedural requirements of Section IX (Financial Assurance).

(4) Compliance with all deliverable and reporting requirements set forth in Section VI of this Consent Decree (Performance of Work) and in the provisions respecting "Remedial Action" and "Reporting" in the SOW; and

(5) Implementation of the Remedial Action and Operation and Maintenance in accordance with the SOW, the OU1 ROD and the OU2 ROD, and/or this Consent Decree, and plans and schedules approved thereunder, including designation of the Supervising Contractor, hiring of contractors, submission of plans, schedules, and reports, and completion of tasks in accordance with deadlines and requirements specified therein.

49. **Stipulated Penalty Amounts - Deliverables.**

a. **Material Defects**. If an initially submitted or resubmitted deliverable contains a material defect, and the deliverable is disapproved or modified by EPA under the provisions respecting "Initial Submissions" or "Resubmissions" of the SOW due to such material defect, then the material defect shall constitute a lack of compliance for purposes of ¶ 47. The provisions of Section XIII (Dispute Resolution) and Section XIV (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding the Settling Party's submissions under this Consent Decree.

b. The following stipulated penalties shall accrue per violation per day for non-compliance with any requirement of this Consent Decree not identified in ¶ 49.b:

Period of Noncompliance	Penalty Per Violation Per Day
1st through 14th day	$1,000
15th through 30th day	$2,500
31st day and beyond	$4,000

50. In the event that EPA assumes performance of a portion or all of the Work pursuant to ¶ 61 (Work Takeover), the Settling Party shall be liable for a stipulated penalty in the amount of $750,000. Stipulated penalties under this Paragraph are in addition to the remedies available under ¶¶ 25 (Access to Financial Assurance) and 61 (Work Takeover).

51. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under the provisions respecting "Approval of Deliverables" of the SOW, during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies the Settling Party of any deficiency; (b) with respect to a decision by the Director of the Emergency and Remedial Response Division, EPA Region 2, under ¶ 44.b or 45.a of Section XIII (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that the Settling Party's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIII (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

53. All penalties accruing under this Section shall be due and payable to the United States within 30 days after the Settling Party's receipt from EPA of a demand for payment of the penalties, unless the Settling Party invokes the Dispute Resolution procedures under Section XIII (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with ¶ 30.b (instructions for future response cost payments).

54. Penalties shall continue to accrue as provided in ¶ 51 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 15 days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, the Settling Party shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days after receipt of the Court's decision or order, except as provided in ¶ 54.c;

c. If the District Court's decision is appealed by any Party, the Settling Party shall pay all accrued penalties determined by the District Court to be owed to the United States into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within 60 days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to the Settling Party to the extent that it prevails.

55. If the Settling Party fails to pay stipulated penalties when due, the Settling Party shall pay Interest on the unpaid stipulated penalties as follows: (a) if the Settling Party has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to ¶ 54 until the date of payment; and (b) if the Settling Party fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under ¶ 53 until the date of payment. If the Settling Party fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

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

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

XV. COVENANTS BY PLAINTIFF

59. **Covenants for The Settling Party by United States.** Except as provided in ¶ 60 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against the Settling Party pursuant to Sections 106 and 107(a) of CERCLA for the Work, Past Response Costs, Future Response Costs, and Natural Resource Damages. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the satisfactory

performance by the Settling Party of its obligations under this Consent Decree. These covenants extend only to the Settling Party and do not extend to any other person.

60. **General Reservations of Rights**. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Party with respect to all matters not expressly included within the United States' covenants. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the Settling Party with respect to:

a. liability for failure by the Settling Party to meet a requirement of this Consent Decree;

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

c. liability based on the ownership of the Site by the Settling Party when such ownership commences after signature of this Consent Decree by the Settling Party;

d. liability based on the operation of the Site by the Settling Party when such operation commences after signature of this Consent Decree by the Settling Party and does not arise solely from the Settling Party's performance of the Work;

e. liability based on the Settling Party's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the OU1 ROD and OU2 ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Party;

f. criminal liability;

g. liability for violations of federal or state law that occur during or after implementation of the Work; and

h. liability, prior to achievement of Performance Standards, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the OU1 ROD and OU2 ROD, but that cannot be required pursuant to ¶ 13 (Modification of SOW or Related Deliverables);

i. liability for additional operable units at the Site or the final response action; and

j. liability for costs that the United States will incur regarding the Site but that are not within the definition of Future Response Costs.

k. Reservations Regarding NRD

(a) Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute civil

or administrative proceedings, as applicable, against SMC in this action or in a new action, seeking recovery of Natural Resource Damages, including costs of damage assessment, under Section 107(a)(4)(C) of CERCLA, if, after the Effective Date:

(i) conditions at the Site, previously unknown to a NR Trustee are discovered and are found to result in releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources; or

(ii) information previously unknown to a NR Trustee is received, and the NR Trustee determines that the new information together with other relevant information indicate that releases of hazardous substances at the Site have resulted in injury to, destruction of, or loss of natural resources of a type or magnitude that was unknown to the NR Trustee as of the date of lodging of the Consent Decree.

(b) The United States reserves all rights it may have under applicable law to oppose any determinations made or any actions taken, ordered or proposed by the State pursuant to this Paragraph.

(c) For purposes of Paragraph 60.k.(a), the information and conditions known to the NR Trustee includes only that information and those conditions known to the NR Trustee as of the date the relevant ROD was signed and set forth in the RODs for the Site and the administrative records supporting the RODs.

61. **Work Takeover**.

a. In the event EPA determines that the Settling Party: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in their performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Settling Party. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide the Settling Party a period of 20 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 20-day notice period specified in ¶ 61.a, the Settling Party has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify the Settling Party in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this ¶ 61.b. Funding of Work Takeover costs is addressed under ¶ 25 (Access to Financial Assurance).

c. The Settling Party may invoke the procedures set forth in ¶ 44 (Record Review), to dispute EPA's implementation of a Work Takeover under ¶ 61.b. However, notwithstanding the Settling Party's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under ¶ 61.b until the earlier of (1) the date that the Settling Party corrects, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work

Takeover Notice, or (2) the date that a final decision is rendered in accordance with ¶ 44 (Record Review) requiring EPA to terminate such Work Takeover.

62. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XVI. COVENANTS BY THE SETTLING PARTY

63. **Covenants by the Settling Party**. Subject to the reservations in ¶ 65, the Settling Party covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the Work, past response actions regarding the Site, Past Response Costs, Future Response Costs, and this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA §§ 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA §§ 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Work, past response actions regarding the Site, Past Response Costs, Future Response Costs, and this Consent Decree; or

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

64. Except as provided in ¶¶ 67 (Waiver of Claims by the Settling Party) and 74 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States brings a cause of action or issues an order pursuant to any of the reservations in Section XV (Covenants by Plaintiff), other than in ¶¶ 60.a (claims for failure to meet a requirement of the Consent Decree), 60.f (criminal liability), and 60.g (violations of federal/state law during or after implementation of the Work), but only to the extent that the Settling Party's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

65. The Settling Party reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of the Settling Party's deliverables or activities.

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

67. **Waiver of Claims by the Settling Party**.

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

b. **Exceptions to Waiver.**

(1) The waiver under this ¶ 67 shall not apply with respect to any defense, claim, or cause of action that the Settling Party may have against any person otherwise covered by such waiver if such person asserts a claim or cause of action relating to the Site against the Settling Party.

(2) The waiver under ¶ 67.a (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver would apply and that conviction has not been vitiated on appeal or otherwise.

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

XVII. EFFECT OF SETTLEMENT; CONTRIBUTION

69. Except as provided in ¶ 67 (Waiver of Claims by the Settling Party), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section XVI (Covenants by the Settling Party), the Settling Party expressly reserves any and all rights (including, but not limited

to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that the Settling Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs, Natural Resource Damages or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

70. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which the Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are the Work, Past Response Costs and Future Response Costs.

71. The Parties further agree, and by entering this Consent Decree this Court finds, that the Complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which the Settling Party has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

72. The Settling Party shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

73. The Settling Party shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States within 10 days after service of the complaint on the Settling Party. In addition, the Settling Party shall notify the United States within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial.

74. **Res Judicata and Other Defenses**. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, the Settling Party shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XV (Covenants by Plaintiff).

XVIII. ACCESS TO INFORMATION

75. The Settling Party shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within the Settling Party's possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. The Settling Party shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

76. **Privileged and Protected Claims.**

a. The Settling Party may assert that all or part of a Record requested by the United States is privileged or protected as provided under federal law, in lieu of providing the Record, provided the Settling Party complies with ¶ 76.b, and except as provided in ¶ 76.c.

b. If the Settling Party asserts a claim of privilege or protection, it shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, the Settling Party shall provide the Record to Plaintiff in redacted form to mask the privileged or protected portion only. The Settling Party shall retain all Records that it claims to be privileged or protected until Plaintiff has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Party's favor.

c. The Settling Party may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that the Settling Party is required to create or generate pursuant to this Consent Decree.

77. **Business Confidential Claims.** The Settling Party may assert that all or part of a Record provided to Plaintiff under this Section or Section XIX (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). The Settling Party shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which the Settling Party may assert business confidentiality claims. Records submitted to EPA determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified the Settling Party that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to the Settling Party.

78. If relevant to the proceeding, the Parties agree that validated sampling or monitoring data generated in accordance with the SOW and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree.

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

XIX. RETENTION OF RECORDS

80. Until 10 years after EPA's Certification of Work Completion under the "Certification of Work Completion" provisions of the SOW, the Settling Party shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that the Settling Party, which is potentially liable as an owner or operator of the Site, must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. The Settling Party must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that the Settling Party (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

81. At the conclusion of this record retention period, the Settling Party shall notify the United States at least 90 days prior to the destruction of any such Records, and, upon request by the United States, and except as provided in ¶ 76 (Privileged and Protected Claims), the Settling Party shall deliver any such Records to EPA.

82. The Settling Party certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to the Settling Party's potential liability regarding the Site since notification to the Settling Party of potential liability by the United States or the State and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XX. NOTICES AND SUBMISSIONS

83. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports, and requests specified in this Consent Decree must be in writing unless otherwise specified. Whenever, under this Consent Decree, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the persons specified below at the addresses specified below. Any Party may change the

person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Notices required to be sent to EPA, and not to the United States, should not be sent to the DOJ. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to the United States:	EES Case Management Unit U.S. Department of Justice Environment and Natural Resources Division P.O. Box 7611 Washington, D.C. 20044-7611 eescdcopy.enrd@usdoj.gov Re: DJ # 90-11-3-11285
As to EPA:	Director, Emergency and Remedial Response Division U.S. Environmental Protection Agency Region 2 290 Broadway New York, New York 10007
and:	Sherrel Henry EPA Remedial Project Manager U.S. Environmental Protection Agency Region 2 290 Broadway New York, New York 10007 henry.sherrel@epa.gov (212) 637-4273
As to EPA Cincinnati Finance Center:	EPA Cincinnati Finance Center 26 W. Martin Luther King Drive Cincinnati, Ohio 45268 cinwd_acctsreceivable@epa.gov

As to SMC

David J. White, Ph.D.
Vice President, Shieldalloy Metallugical Corporation
c/o AMG Advanced Metallurgical Group N.V.
435 Devon Park Drive, Building 200
Wayne, PA 19087
(614) 599-9582
dwhite@amg-nv.com

- **And –**

Dennis Shea, Esq
Director, Shieldalloy Metallurgical Corporation
c/o AMG Advanced Metallurgical Group N.V.
435 Devon Park Drive, Building 200
Wayne, PA 19087
(610) 293-5812
dshea@AMG-nv.com

Marty M. Judge, Esq.
Flaster Greenberg PC
1810 Chapel Ave. West
Cherry Hill, NJ 08002
(856) 382-2259
marty.judge@flastergreenberg.com

As to TRC:

Patrick J. Hansen
TRC
1601 Market Street
Suite 2555
Philadelphia, PA 19013
phansen@trcsolutions.com
(215) 563-2122 x.14985

Marc S. Faecher
Senior Vice President
TRC
41 Spring Street, New Providence, NJ 07974
908.988.1688 | F: 908.464.3712
mfaecher@trcsolutions.com

XXI. RETENTION OF JURISDICTION

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

XXII. APPENDICES

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

"Appendix A" is the RODs for OU1 and OU2.

"Appendix B" is the SOW for OU1 and OU2.

"Appendix C" is the map of the Site.

"Appendix D" is the map of the SMC Facility and the Hudson Branch.

"Appendix E" is the draft form of Proprietary Controls.

XXIII. MODIFICATION

86. Except as provided in ¶ 13 (Modification of SOW or Related Deliverables), material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the United States, the Settling Party, and shall be effective upon approval by the Court. Except as provided in ¶ 13, non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and the Settling Party. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

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

XXIV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

88. This Consent Decree shall be lodged with the Court for at least 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. The Settling Party consents to the entry of this Consent Decree without further notice.

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

XXV. SIGNATORIES/SERVICE

90. Each undersigned representative of the Settling Party and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

91. The Settling Party agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Party in writing that it no longer supports entry of the Consent Decree.

92. The Settling Party shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. The Settling Party agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Settling Party need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXVI. FINAL JUDGMENT

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

94. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the United States and the Settling Party.

SO ORDERED THIS 13 DAY OF April, 2016.

United States District Judge

Signature Page for Consent Decree regarding the Shieldalloy Metallurgical Corporation Superfund Site

FOR THE UNITED STATES OF AMERICA:

Dated

ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
U.S. Department of Justice
Environment and Natural Resources Division
Washington, D.C. 20530

November 9 2016
Dated

PETER KAUTSKY
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for Consent Decree regarding the Shieldalloy Metallurgical Corporation Superfund Site

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

9/28/2016
Dated

WALTER MUGDAN
Director, Emergency and Remedial Response Division
Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, New York 10007

9/27/16
Dated

MICHAEL J. VAN ITALLIE
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

Signature Page for Consent Decree regarding the Shieldalloy Metallurgical Corporation Superfund Site

FOR SHIELDALLOY METALLURGICAL CORP.:

22 September 2016
Dated

Dennis R. Shea

Name (print): Dennis R. Shea
Title: Secretary & Director
Address: 35 S.W. Boulevard
P.O. Box 768
Newfield, NJ 08344

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:	Dennis Shea, Esq.
Title:	Vice President Legal – AMG Americas
Company:	c/o AMG Advanced Metallurgical Group N.V.
Address:	435 Devon Park Drive, Building 200 Wayne, PA 19087
Phone:	(610) 293-5812
Email:	dshea@AMG-NV.com