IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	
	)	Civil Action No.
v.	)	
	)	CONSENT DECREE
COSMED GROUP, INC.,	)	
Defendant.	)	

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CONSENT DECREE

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint in this action concurrently with this Consent Decree alleging that Defendant, Cosmed Group, Inc. ("Cosmed") (EPA and Cosmed will be referred to collectively as the "Parties"), violated Section 112 of the Clean Air Act ("Act" or "CAA"), 42 U.S.C. § 7412, and certain requirements of the state implementation plan adopted by the State of Illinois ("Illinois SIP") approved by EPA under Section 110 of the CAA, 42 U.S.C. § 7410, and federally-enforceable under Section 113(b) of the Act, 42 U.S.C. § 7413(b).

The Complaint against Defendant alleges, pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), that Cosmed violated federal regulations, entitled *National Emissions Standards for Hazardous Air Pollutant Emissions from Ethylene Oxide Sterilizers*, promulgated under Section 112 of the Act, 42 U.S.C. § 7412, by failing to install pollution controls, meet applicable emission limits, conduct timely compliance testing, properly monitor pollution controls, provide timely and accurate notifications and reports to EPA, and maintain compliance records. The Complaint also alleges that Cosmed failed to obtain a valid state-issued operating permit as required by the Illinois SIP.

The violations alleged in the Complaint involve Cosmed's use of ethylene oxide ("EtO"), a volatile organic compound ("VOC") and hazardous air pollutant ("HAP") under Section 112 of the Act, as a sterilizing agent at six separate current and former Cosmed facilities nationwide. The facilities where the violations are alleged to have occurred are former Cosmed facilities located in Coventry, RI, Grand Prairie, TX, San Diego, CA, South Plainfield, NJ, and

Waukegan, IL, and a facility currently owned by Cosmed in Baltimore, MD (collectively, the "Facilities").

Defendant does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

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 will avoid litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section I, below, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 113(b) of the Act, 42 U.S.C. § 7413(b), and over the Parties. Venue lies in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b), 1391(c), and 1395(a), because Defendant is located, and does business, in this judicial district, and some of the violations alleged in the Complaint are alleged to have occurred in this judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendant consents to the Court's jurisdiction over this Decree or such action and over Defendant, and consents to venue in this judicial district.

2. For purposes of this Consent Decree, Defendant agrees that the Complaint

states claims upon which relief may be granted pursuant to Section(s) 110, 112, and 113(b) of the Act.

3. Notice of the commencement of this action has been given to the States of California, Illinois, Maryland, New Jersey, Rhode Island, and Texas, as required by Section 113(b) of the Act, 42 U.S.C. § 7413(b).

II. APPLICABILITY

4. The obligations of this Consent Decree apply to and are binding upon the United States and upon Defendant and any successor or other entities or persons otherwise bound by law.

5. Any transfer of ownership or operation of one or more of the Facilities currently owned by Cosmed to any other person must be conditioned upon the transferee's agreement to undertake the obligations required by this Decree, as provided in a written agreement between Defendant and the proposed transferee, enforceable by the United States as third-party beneficiary of such agreement. At least 30 days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to EPA Region I and any other EPA Region(s) in which any of the Facilities affected by the transfer are located, to the United States Attorney for the District of Rhode Island and the United States Attorney for any other district(s) in which any of the Facilities affected by the transfer are located, and to the United States Department of Justice, in accordance with Section XIV of this Decree (Notices). Any attempt to transfer ownership or operation of any of the

Facilities currently owned by Cosmed without complying with this Paragraph constitutes a separate violation of this Decree. No change in ownership, operation, or legal status of Defendant or transfer of ownership or operation of one or more of the Facilities currently owned by Cosmed shall release Defendant from its continued performance of all of its obligations under this Decree, including the obligations to perform the injunctive relief set out in Section V and Appendices A and B, below, or the obligations to perform the supplemental environmental project set out in Section VI and in Appendix C, below.

6. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

7. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

III. DEFINITIONS

8. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

a. "Complaint" shall mean the complaint filed by the United States in

this action;

b. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXI);

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

d. "Defendant" shall mean Cosmed Group, Inc., as named in the Complaint;

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

f. The "Facilities" shall mean, collectively, the facility currently owned by Defendant at 4200 Boston Street in Baltimore, Maryland, and the facilities formerly owned by Defendant at 8 Industrial Drive in Coventry, Rhode Island; 3459 South Clinton Avenue in South Plainfield, New Jersey; 1160 Northpoint Boulevard in Waukegan, Illinois; 1175 Isuzu Parkway in Grand Prairie, Texas; and, 7685 Saint Andrews Avenue in San Diego, California. When referred to individually, each of the Facilities shall be identified by the state in which it is located, namely, the "Rhode Island Facility," the "New Jersey Facility," the "Maryland Facility," the "Illinois Facility," the "Texas Facility," and the "California Facility," respectively.

g. "Interest" shall mean interest at the rate specified in 28 U.S.C.

§ 1961;

h. "Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

i. "Parties" shall mean the United States and Defendant;

j. "Section" shall mean a portion of this Decree identified by a roman numeral; and,

k. "United States" shall mean the United States of America, acting on behalf of EPA.

IV. CIVIL PENALTY

9. Within 30 days after the Effective Date of this Consent Decree, Defendant shall pay the sum of $500,000 as a civil penalty. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to Defendant following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the District of Rhode Island. At the time of payment, Defendant shall simultaneously send written notice of payment and a copy of any transmittal documentation (which should reference DOJ case number 90-5-2-1-08115 and the civil action number of this case) to the United States in accordance with Section XIV of this Decree (Notices).

10. Defendant agrees to treat all payments made pursuant to this Section as civil penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction for Cosmed Group, Inc., or any of its corporate affiliates, under federal, state or local

law.

V. COMPLIANCE REQUIREMENTS

11. Defendant shall comply with maximum achievable control technology ("MACT") requirements established under the CAA for new and existing EtO sterilizers, namely, the *National Emissions Standards for Hazardous Air Pollutant Emissions from Ethylene Oxide Sterilizers*, codified at 40 C.F.R. Part 63, Subpart O ("EtO MACT" or "Subpart O"), with respect to the Maryland Facility from the date of lodging.

12. Environmental Management System. Defendant shall develop and implement a comprehensive, compliance-focused Environmental Management System ("EMS") covering all of the "EMS Facilities," as described in the attached Appendix A. The EMS is specifically described in the Scope of Work attached hereto as Appendix A ("EMS SOW"), which is incorporated into, and fully enforceable under, this Decree. Defendant shall perform the EMS in accordance with the provisions of this Paragraph and the specifications and schedules set forth in the EMS SOW.

13. Nationwide Facility Audits. Defendant shall retain one or more independent third party audit firms to complete multi-media compliance audits of each of the "Audit Facilities," as described in the attached Appendix B. The multi-media compliance audits are specifically described in the Scope of Work attached hereto as Appendix B ("Audit SOW"), which is incorporated into, and fully enforceable under, this Decree. Defendant shall complete the multi-media compliance audits in accordance with the provisions of this Paragraph and the specifications and schedules set forth in the Audit SOW. EPA acknowledges that, prior to

entering into this Consent Decree, Cosmed retained the environmental consulting firm of TRC Environmental ("TRC") and that TRC has completed certain work on behalf of Cosmed that may be relevant to certain requirements of the Audit SOW. EPA agrees that work required under the Audit SOW that has been completed by TRC at one or more of the Audit Facilities and in accordance with the Audit SOW need not be repeated to comply with the Audit SOW. To complete the requirements of the Audit SOW, Cosmed shall retain one or more third party audit firms (which may include TRC) that meet the criteria set forth in the Audit SOW. To comply with the Audit SOW, Cosmed shall include in the final Audit Report information resulting from TRC work, as applicable, and that of any other audit firm(s) retained to complete the requirements of the Audit SOW.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

14. Defendant shall implement the four (4) Supplemental Environmental Projects ("SEPs"), in accordance with the terms and schedules set out in this Consent Decree and in Appendix C and Attachments C-1, C-2, C-3, and C-4, which are attached to, incorporated into, and fully enforceable under, this Decree. All four of the SEPs shall be completed within three (3) years after entry of this Decree, each in accordance with the schedule set forth in Attachment C-1, C-2, C-3, or C-4, as applicable. The SEPs involve the elimination of substantial amounts of harmful air emissions from diesel and gasoline fueled vehicles and equipment. The SEPs are intended to yield significant environmental or public health benefits and are beyond the requirements of existing law. In implementing the SEPs, Defendant shall spend a total of $1,000,000 in eligible SEP costs, as well as any and all escrow interest accrued. Eligible SEP

costs include the costs of planning and implementing the SEPs, but do not include Defendant's overhead, additional employee time and salary, administrative expenses, legal fees, and contractor oversight. Eligible SEP costs also do not include costs associated with developing and implementing the EMS or multi-media compliance audits under Section V of this Decree. Defendant agrees not to use these payments in any way as, or in furtherance of, a tax deduction for Cosmed Group, Inc., or any of its corporate affiliates, under federal, state or local law.

15. Defendant is responsible for the satisfactory completion of the SEPs in accordance with the requirements of this Decree. To have satisfactorily completed the SEPs Defendant shall have fully funded, and ensured completion of, the SEPs in accordance with this Consent Decree, Appendix C, and Attachments C-1, C-2, C-3 and C-4 hereto. "Fully fund" means establishing interest-bearing escrow accounts in the amounts specified for the SEPs according to the requirements of this Consent Decree, Appendix C, and Attachments C-1, C-2, C-3 and C-4 hereto.

16. With regard to the SEPs, Defendant certifies the truth and accuracy of each of the following:

a. That, to Cosmed's knowledge, all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and represents a fair estimate of the costs necessary to implement the SEPs;

b. That, as of the date of executing this Decree, Defendant is not required to perform or develop the SEPs by any federal, state, or local law or regulation, nor is Defendant required to perform or develop the SEPs by agreement, grant, or as injunctive relief

awarded in any other action in any forum;

c. That the SEPs are not projects that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;

d. That Defendant has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action; and,

e. That Defendant will not receive any reimbursement for any portion of the SEPs from any other person.

For certifications relating to the information referenced in Subparagraph a, above, Cosmed may place reasonable reliance on the accuracy of reports or other written information provided to it by EPA, state or local authorities, or entities under contract with Cosmed or with such authorities to implement the SEPs.

17. SEP Completion Report

a. Pursuant to the provisions of Appendix C hereto, Defendant shall submit a SEP Completion Report(s) to the United States, in accordance with Section XIV of this Consent Decree (Notices). For each of the SEPs, the SEP Completion Report shall contain the following information:

i. A detailed description of the SEP as implemented;

ii. A description of any problems encountered in completing the SEP and the solutions thereto;

iii. An itemized list of all eligible SEP costs;

iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Decree or that the amounts set forth in Paragraph 14, above, and in Appendix C and Attachments C-1, C-2, C-3, and C-4 hereto have been exhausted prior to completion of one or more of the SEPs, in which case the certification shall set forth the extent to which each SEP has been implemented; and,

v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

18. EPA may, in its sole discretion, require information in Cosmed's possession, custody, or control in addition to that described in the preceding Paragraph, in order to determine the adequacy of SEP completion or eligibility of SEP costs.

19. After receiving the SEP Completion Report, the United States shall notify Defendant whether or not Defendant has satisfactorily completed the SEP. If the SEP has not been satisfactorily completed in accordance with all schedules, or if the amount expended on performance of the SEP is less than the amount set forth in Paragraph 14, above, Stipulated Penalties may be assessed under Section VIII of this Consent Decree.

20. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section X of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

21. Each submission required under this Section shall be signed by an official

with knowledge of the SEP and shall bear the certification language set forth in Paragraph 26, below. Notwithstanding the preceding sentence, any such submission may also be accompanied by an acknowledgment that certain information has been provided by EPA or another third party and, *provided* such third party information is identified with specificity, the certification accompanying that third party information may be modified to reflect that the official believes it to be true and correct.

22. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to any of the SEPs under this Decree shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action, United States v. Cosmed Group, Inc., taken on behalf of the U.S. Environmental Protection Agency under the federal Clean Air Act."

VII. REPORTING REQUIREMENTS

23. Defendant shall submit the following reports:

a. Within 30 days after the end of each calendar-year quarter (i.e., by April 30, July 30, October 30, and January 30) after lodging of this Consent Decree, until termination of this Decree pursuant to Section XVIII, Defendant shall submit by overnight delivery a quarterly report for the preceding quarter that shall include a discussion of Defendant's progress in satisfying its obligations in connection with the EMS, facility audits, and SEPs under Sections V and VI of this Decree including, at a minimum, a narrative description of activities undertaken, compliance with the schedules or milestones set forth in Sections V and VI of this Consent Decree and Appendices A, B, and C to this Decree, and, for the SEPs, a summary of

costs incurred since the previous report.

b. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify the United States of such violation and its likely duration in writing within ten working days of the day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, Defendant shall include a statement to that effect in the report. Defendant shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within 30 days of the day Defendant becomes aware of the cause of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the requisite notice for purposes of Section IX (Force Majeure).

24. In the case of any violation or other event that may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify EPA orally or by electronic or facsimile transmission as soon as possible, but not later than 24 hours after Defendant first knew of, or should have known of, the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

25. All reports shall be submitted to the persons designated in Section XIV of this Consent Decree (Notices).

26. Each report submitted by Defendant under this Section shall be signed by a duly authorized Cosmed official and shall include the following certification:

> "I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that this document and its attachments were prepared either by me personally or under my direction or supervision in a manner designed to ensure that qualified and knowledgeable personnel properly gathered and presented the information contained therein. I further certify, based on my personal knowledge or on my inquiry of those individuals immediately responsible for obtaining the information, that the information is true, accurate and complete."

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

27. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the Clean Air Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

28. Any information provided pursuant to this Consent Decree may be used by the United States in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

VIII. STIPULATED PENALTIES

29. If Defendant fails to pay the civil penalty required to be paid under Section IV of this Decree (Civil Penalty) when due, Defendant shall pay a stipulated penalty of $5,000 per day for each day that the payment is late, together with Interest from the date when payment was due. Late payment of the civil penalty shall be made in accordance with Section IV, Paragraphs 9 and 10, above. Stipulated Penalties shall be paid in accordance with Section VIII, Paragraph 37, below. All transmittal correspondence shall state that any such payment is for late

payment of the civil penalty due under this Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 9, above.

30. Defendant shall be liable for Stipulated Penalties to the United States for violations of this Consent Decree as specified below, unless excused under Section IX (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

31. Compliance Milestones

a. The following Stipulated Penalties shall accrue per violation per day for each violation of the requirements identified in Subparagraph b:

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

b. EMS and facility audit requirements to which the penalties specified in Subparagraph a, above, apply include the following: (i) Defendant's submission of the EMS Manual, EMS Audit Plan, Audit Report, Action Plan, and Action Plan Completion Certification, as described in Appendix A; and, (ii) Defendant's submission of the Audit Work Plan, Audit Report, and Statement listing non-compliance items along with actions taken to remedy them, as described in Appendix B.

32. Reporting Requirements. The following Stipulated Penalties shall accrue per violation per day for each violation of the reporting requirements of Paragraph 5, above, and Section VII of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$500	1st through 14th day
$750	15th through 30th day
$1,000	31st day and beyond

33. SEP Compliance

a. In all cases, if by sixty (60) days after three (3) years from entry of the Consent Decree, Defendant has authorized the release from the escrow accounts required by Appendix C and Attachments C-1, C-2, C-3, and C-4 of less than the amount of $1,000,000 in eligible SEP costs plus any and all escrow interest accrued, as set forth in Paragraph 14, Defendant shall pay a stipulated penalty equal to the difference between the amount of total eligible SEP costs Cosmed authorized for release from the escrow accounts and the amount set forth in Paragraph 14.

b. If Defendant fails to establish one or more interest-bearing SEP escrow accounts or to fund them, within sixty (60) days after entry of the Consent Decree, at the amounts specified herein, or if Defendant halts or abandons SEP implementation activities required by this Consent Decree, Appendix C, and any attachment to Appendix C, Defendant shall pay a stipulated penalty equal to twice the amount of the difference between the total amount of eligible SEP costs incurred by Defendant and the amount set forth in Paragraph 14.

The penalty under this Subparagraph is in addition to any penalty owed under Subparagraph a, above, and any penalties owing under Subparagraph d, below, for reporting deadlines missed up to the time that the penalty under this Subparagraph accrues. The penalty under this Subparagraph shall accrue as of the date establishment and funding of the escrow account is due or the date SEP implementation ceases, whichever applies.

c. For each SEP specified in this Consent Decree, Appendix C, and Attachments C-1 through C-4 hereto, if Defendant has completed the SEP, but EPA determines that the SEP is not completed satisfactorily, Defendant shall pay a stipulated penalty equal to 10% of the total amount initially required to fully fund the escrow account for that SEP, in addition to any other stipulated penalties required under Paragraph 33. Notwithstanding the previous sentence, for each SEP specified in this Decree, Appendix C, and Attachments C-1 through C-4, if EPA determines, pursuant to the requirements of this Consent Decree, Appendix C, and Attachments C-1 through C-4, that Defendant made good faith and timely efforts to complete the SEP and Defendant certifies, with supporting documentation, that at least 90 percent of the amount of eligible SEP costs which were required to be spent were expended on the SEP, Defendant shall not be liable for any stipulated penalty under this Subparagraph, and any remaining balance in escrow shall be paid to the United States in accordance with Subparagraph a, above, and Paragraph 37.

d. If Defendant fails to comply with the schedule for submitting any SEP Completion Report or any quarterly SEP report regarding implementation of an SEP or fails to comply with the schedule for establishing fully funded escrow accounts, as required under this

Consent Decree , Appendix C, or any attachment to Appendix C, Defendant shall pay Stipulated Penalties for each such failure to report or fully fund, as follows:

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

Such penalties shall accrue from the date Defendant was required to submit each SEP report or fully fund each escrow account until the relevant report is submitted or escrow account funded.

34. Subject to the provisions of Paragraph 33(a)-(c), above, Stipulated Penalties under this Section shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. Defendant shall pay any Stipulated Penalty within 30 days of receiving the United States' written demand.

35. The United States may, in the unreviewable exercise of its discretion, reduce or waive Stipulated Penalties otherwise due it under this Consent Decree.

36. Stipulated Penalties shall continue to accrue as provided in Paragraph 34, above, during any Dispute Resolution, with Interest, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing,

together with Interest, to the United States within 30 days of the effective date of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with Interest, within 60 days of receiving the Court's decision or order, except as provided in Subparagraph c, below;

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with Interest, within 15 days of receiving the final appellate court decision.

37. Defendant shall, as directed by the United States, pay Stipulated Penalties owing to the United States by EFT in accordance with Section IV, above or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-2-1-08115 and United States Attorney's Office file number 2003V00204, and delivered to the office of the United States Attorney, District of Rhode Island, Financial Litigation Unit, Fleet Center, 50 Kennedy Plaza, 8th Floor, Providence, RI 02903.

38. Defendant agrees to treat all stipulated penalty payments made pursuant to this Section as civil penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction for Cosmed Group, Inc., or any of its corporate affiliates, under federal, state or local law.

39. If Defendant fails to pay Stipulated Penalties according to the terms of this

Consent Decree, Defendant shall be liable for Interest on such penalties, accruing as of the date payment became due.

40. Subject to the provisions of Section XII of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States for Defendant's violation of this Consent Decree or applicable law.

IX. FORCE MAJEURE

41. A "force majeure event" is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree. The provisions of this Section IX of the Consent Decree shall not apply to violations disclosed pursuant to any environmental audit carried out under Appendix B of this Decree.

42. Defendant shall provide notice orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time Defendant first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Defendant shall also provide written notice, as provided in Section XIV of this Consent Decree (Notices), within seven days of the time Defendant first knew of, or by the exercise of due

diligence, should have known of, the event. The notice shall state the anticipated duration of any delay; its cause(s); Defendant's past and proposed actions to prevent or minimize any delay; a schedule for carrying out those actions; and Defendant's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph shall preclude Defendant from asserting any claim of force majeure.

43. If the United States agrees that a force majeure event has occurred, the United States may agree to extend the time for Defendant to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to an extension of time, the appropriate modification shall be made pursuant to Section XVIII of this Consent Decree (Modification).

44. If the United States does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by Defendant, the United States' position shall be binding, unless Defendant invokes Dispute Resolution under Section X of this Consent Decree. In any such dispute, Defendant bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event; that Defendant gave the notice required by Paragraph 42; that the force majeure event caused any delay Defendant claims was attributable to that event; and that Defendant exercised best efforts to prevent or minimize any delay caused by the event.

X. DISPUTE RESOLUTION

45. Unless otherwise expressly provided for in this Consent Decree, the

dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, such procedures shall not apply to violations disclosed pursuant to an environmental audit carried out under Appendix B of this Decree. Such procedures also shall not apply to actions by the United States to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

46. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within fourteen days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

47. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

48. The United States shall serve its Statement of Position within sixty days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall

include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and all supporting documents relied upon by the United States. The United States' Statement of Position shall be binding on Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

49. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

50. The United States shall respond to Defendant's motion within the time period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

51. In any dispute under this Section X, Defendant shall bear the burden of demonstrating that its position clearly complies with this Consent Decree and the Clean Air Act and that Defendant is entitled to relief under applicable law. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law.

52. The invocation of dispute resolution procedures under this Section shall

not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 36, above. If Defendant does not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section VIII (Stipulated Penalties).

XI. INFORMATION COLLECTION AND RETENTION

53. The United States and its representatives, including attorneys, contractors, and consultants, shall have the right of entry to any facility covered by this Consent Decree, at all reasonable times and upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States in accordance with the terms of this Consent Decree;

c. obtain samples and, upon request, splits of any samples taken by Defendant or its representative, contractors, or consultants;

d. obtain documentary evidence, including photographs and similar data, consistent with the procedures in Paragraph 56 for asserting a privilege claim; and,

e. assess Defendant's compliance with this Consent Decree.

54. Upon request, Defendant shall provide EPA or its authorized representatives splits of any samples taken by Defendant. Upon request, EPA shall provide

Defendant splits of any samples taken by EPA. Upon request, EPA also shall provide Defendant with copies of any documentary evidence such as photographs or similar data obtained pursuant to Subparagraph 53.d, above. Such documentary evidence or similar data shall not include EPA-generated materials such as inspection notes, draft reports, or other deliberative or enforcement sensitive information.

55. Until four years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States may request copies of any documents or records required to be maintained under this Paragraph.

56. At the conclusion of the document-retention period provided in the preceding Paragraph, Defendant shall notify the United States at least 90 days prior to the destruction of any records or documents subject to the requirements of the preceding Paragraph, and, upon request by the United States, Defendant shall deliver any such records or documents to EPA. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall provide the following: (1) the title of the document, record, or

information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendant. However, no documents, reports, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

57. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain records or information imposed by applicable federal or state laws, regulations, or permits.

XII. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

58. This Consent Decree resolves all civil claims of the United States under Section 113 of the Act for the violations alleged in the Complaint filed in this action, through the date of lodging of this Consent Decree with the Court.

59. Except as expressly specified herein, this Consent Decree shall not be construed to prevent or limit the rights of the United States to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions including, without limitation, violations disclosed pursuant to any environmental audit carried out under Appendix B of this Decree.

60. Defendant is responsible for achieving and maintaining complete

compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to said laws, regulations, or permits. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Decree will result in compliance with provisions of the Clean Air Act, 42 U.S.C. § 7401 *et seq.*

61. This Consent Decree does not limit or affect the rights of Defendant or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

62. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

63. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, one or more of the Facilities, whether related to the violations addressed in this Consent Decree or otherwise.

XIII. COSTS

64. The Parties shall bear their own costs of this action, including attorneys'

fees, except that the United States shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by Defendant.

XIV. NOTICES

65. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08115

To EPA:

Rebecca Lynn Kurowski, Environmental Engineer
U.S. Environmental Protection Agency
Region 1 - New England
One Congress Street
Suite 1100 (Mail Code SEA)
Boston, MA 02114-2023

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 - New England
One Congress Street
Suite 1100 (Mail Code SEL)
Boston, MA 02114-2023

To Defendant:

David G. Howe, Vice President of Operations
Cosmed Group, Inc.
28 Narragansett Avenue
Jamestown, RI 02835

and

Todd R. Wiener, Esquire
McDermott, Will & Emery
227 West Monroe Street
Chicago, Illinois 60606-5096

66. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

67. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, by certified mail or overnight delivery, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XV. EFFECTIVE DATE

68. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XVI. RETENTION OF JURISDICTION

69. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections X and XVII, or effectuating or enforcing compliance with the terms of this Decree.

XVII. MODIFICATION

70. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. Notwithstanding the above, the terms and schedules contained in Appendices A - C of this Decree may be modified upon written agreement of EPA and Defendant, without Court approval, unless any such modification effects a material change to the terms of this Consent Decree or materially affects the Defendant's ability to meet the requirements of this Decree.

XVIII. TERMINATION

71. After Defendant has maintained continuous satisfactory compliance with this Consent Decree for a period of four (4) years after the Effective Date of this Consent Decree, has complied with all other requirements of this Consent Decree, including those relating to the EMS and compliance audits required by Section V and Appendices A and B of the Decree and to the SEPs required by Section VI and Appendix C of the Decree, and has paid the civil penalty and any accrued Stipulated Penalties as required by this Consent Decree, Defendant may serve upon the United States a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

72. Following receipt by the United States of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States agrees that the Decree may be

terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

73. If the United States does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section X of this Decree. However, Defendant shall not seek Dispute Resolution of any dispute, under Paragraph 47 (formal dispute resolution) of Section X, until at least 90 days after service of its Request for Termination.

XIX. PUBLIC PARTICIPATION

74. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with 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 indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice.

XX. SIGNATORIES/SERVICE

75. Each undersigned representative of Defendant, EPA, 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 the Party he or she represents to this document.

76. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

77. Defendant agrees not to oppose entry of this Consent Decree by the Court

or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

78. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree 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.

XXI. INTEGRATION/APPENDICES

79. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and submittals that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXII. FINAL JUDGMENT

80. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

XXIII. APPENDICES

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

"Appendix A" is the Scope of Work for the Environmental Management System;

"Appendix B" is the Scope of Work for the Multi-Media Compliance Audits; and,

"Appendix C" is the Scope of Work for the Supplemental Environmental Projects.

Dated and entered this __ day of _____, 2005.

_____

UNITED STATES DISTRICT JUDGE
District of Rhode Island

FOR PLAINTIFF UNITED STATES OF AMERICA:

DATE: 8/8/05

KELLY A. JOHNSON
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

DATE: 8/11/05

HUGH W. MARTINEZ
DOJ Special Attorney
Environmental Enforcement Section
Environment and Natural Resources Division

EPA Region 1 - New England
Office of Environmental Stewardship
One Congress Street
Suite 1100 (Mail Code SEL)
Boston, MA 02114-2023
(617) 918-1867

ROBERT CLARK CORRENTE
United States Attorney
District of Rhode Island

DATE: _____

_____
MICHAEL P. IANNOTTI
Assistant United States Attorney
District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, Rhode Island 02903
(401) 709-5000

DATE: 8/03/05

STEPHEN S. PERKINS, Director
Office of Environmental Stewardship
United States Environmental Protection Agency
EPA Region 1 - New England

DATE: 8-3-05

HUGH W. MARTINEZ
Senior Enforcement Counsel
EPA Region 1 - New England

DATE: Aug. 11, 2005

Kathleen C. Callahan

KATHLEEN C. CALLAHAN
Acting Regional Administrator
United States Environmental Protection Agency
EPA Region 2

DATE: 7/26/05

DONALD S. WELSH
Regional Administrator
United States Environmental Protection Agency
EPA Region 3

DATE: 7/25/05

WILLIAM C. EARLY
Regional Counsel
United States Environmental Protection Agency
EPA Region 3

DATE: 7/26/05

for DENNIS M. ABRAHAM
Senior Assistant Regional Counsel
EPA Region 3

DATE: 8/8/05

for BHARAT MATHUR
Acting Regional Administrator
United States Environmental Protection Agency
Region 5

DATE: 8.5.05

JOANNA GLOWACKI
Associate Regional Counsel
EPA Region 5

DATE: _____

RICHARD E. GREENE
Regional Administrator
United States Environmental Protection Agency
Region 6

DATE: Aug 15, 2005

WAYNE NASTRI
Regional Administrator
United States Environmental Protection Agency
EPA Region 9

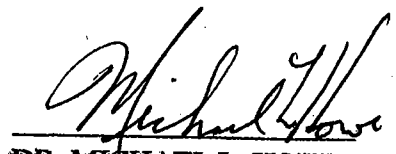
DATE: 8/10/05

Phyllis P. Harris for

THOMAS V. SKINNER
Acting Assistant Administrator
United States Environmental Protection Agency
Office of Enforcement and Compliance Assurance

FOR DEFENDANT COSMED GROUP, INC.:

DATE: 8/1/05



DR. MICHAEL L. HOWE
President and CEO
Cosmed Group, Inc.
28 Narragansett Avenue
Jamestown, RI 02835
(401) 423-2003

APPENDIX A

U.S. v. Cosmed Group, Inc.

ENVIRONMENTAL MANAGEMENT SYSTEM - SCOPE OF WORK

I. Introduction

Pursuant to paragraph 12 of the foregoing Consent Decree, Cosmed Group, Inc. ("Cosmed" or "Defendant") shall develop an Environmental Management System ("EMS") for all facilities in the United States that are owned or operated by Cosmed at the time of lodging of the Consent Decree, including but not necessarily limited to the three (3) sterilization facilities located at 4200 Boston Street in Baltimore, MD, 2500 Brunswick Avenue in Linden, NJ and 1225 East Greg Street in Sparks, NV (collectively, the "EMS Facilities").

II. Environmental Management System

A. Development and Implementation of Comprehensive EMS and EMS Manual

1. The Defendant shall develop a Comprehensive EMS for the EMS Facilities prepared in accordance with, and including, the following twelve key elements:

a. Environmental Policy: This policy, upon which the EMS is based, must clearly communicate management's commitment to achieving compliance with applicable federal, state, and local environmental statutes, regulations, enforceable agreements, and permits (hereafter, "environmental requirements"), minimizing risks to the environment from unplanned contaminant releases, and continual improvement in environmental performance. The policy should also state management's intent to provide adequate personnel and other resources for the EMS.

b. Organization, Personnel, and Oversight of EMS

i. Describes, organizationally, how the EMS is implemented and maintained.

ii. Includes organization charts that identify units, line management, and other individuals having environmental performance, risk reduction, and regulatory compliance responsibilities.

iii. Identifies and defines specific duties, roles, responsibilities, and authorities of key environmental program personnel in implementing and sustaining the EMS (e.g., could include position descriptions and performance standards for all environmental department personnel, and excerpts from others having specific environmental program and regulatory compliance responsibilities).

iv. Includes ongoing means of communicating environmental issues

and information to all organization personnel, on-site service providers, and contractors, and for receiving and addressing their concerns.

c. Accountability and Responsibility

i. Specifies accountability and environmental responsibilities of organization's managers, on-site service providers, and contractors for environmental protection and risk reduction measures, assuring compliance, required reporting to regulatory agencies, and corrective actions implemented in their area(s) of responsibility.

ii. Describes incentive programs for managers and employees to perform in accordance with compliance policies, standards and procedures.

iii. Describes potential consequences for departure from specified operating procedures, including liability for civil/administrative penalties imposed as a result of noncompliance.

d. Environmental Requirements

i. Describes process for identifying, interpreting, and effectively communicating environmental requirements to affected organization personnel, on-site service providers, and contractors, and then ensuring that facility activities conform to those requirements (i.e., ongoing compliance monitoring). Specifies procedures for prospectively identifying and obtaining information about changes and proposed changes in environmental requirements, and incorporating those changes into the EMS (i.e., regulatory "change management").

ii. Establishes and describes processes to ensure communication with regulatory agencies regarding environmental requirements and regulatory compliance.

e. Assessment, Prevention, and Control

i. Identifies an ongoing process for assessing operations, for the purposes of preventing and controlling or minimizing reasonably foreseeable releases, ensuring environmental protection, and maintaining compliance with statutory and regulatory requirements. Processes currently in use at the EMS Facilities may be described if appropriate. This section shall describe monitoring and measurements, as appropriate, to ensure sustained compliance.

It shall also include identifying operations and waste streams where equipment malfunctions and deterioration, operator errors or deliberate malfeasance, and discharges or emissions may be causing, or may lead to: (1) releases of hazardous waste or other pollutants to the environment, (2) a threat to human health or the environment, or (3) violations of environmental requirements.

ii. Describes process for identifying operations and activities where documented standard operating practices (SOPs) are needed to prevent potential violations or unplanned pollutant releases, and defines a uniform process for developing, approving and implementing the SOPs.

iii. Describes a system for conducting and documenting routine, objective, self-inspections by department supervisors and trained staff, especially at locations identified by the process described in a. above, to check for malfunctions, deterioration, worker adherence to SOPs, unusual situations, and unauthorized releases.

iv. Describes process for ensuring input of environmental requirements or concerns regarding potential operator errors or deliberate malfeasance in planning, design, and operation of ongoing, new, and/or changing buildings, processes, equipment, maintenance activities, and products (i.e., operational "change management").

f. Environmental Incident and Noncompliance Investigations

i. Describes standard procedures and requirements for internal and external reporting of potential violations and release incidents.

ii. Establishes procedures for investigation, and prompt and appropriate correction of potential violations. The investigation process includes root-cause analysis of identified problems to aid in developing the corrective actions.

iii. Describes a system for development, tracking, and effectiveness verification of corrective and preventative actions. Recently developed systems currently in use at the EMS Facilities may be described if appropriate.

iv. Each of these procedures shall specify self-testing of such procedures, where practicable.

g. Environmental Training, Awareness, and Competence

i. Identifies specific education and training required for organization personnel, as well as process for documenting training provided.

ii. Describes program to ensure that organization employees are aware of its environmental policies and procedures, environmental requirements, and their roles and responsibilities within the environmental management system.

iii. Describes program for ensuring that personnel responsible for meeting and maintaining compliance with environmental requirements are competent on the basis of appropriate education, training, and/or experience.

iv. Identifies training on how to recognize operations and waste streams where equipment malfunctions and deterioration, operator errors or deliberate malfeasance, and discharges or emissions may be causing, or may lead to: (1) releases of hazardous waste or other pollutants to the environment, (2) a threat to human health or the environment, or (3) violations of environmental requirements.

h. Environmental Planning and Organizational Decision-Making

i. Describes how environmental planning will be integrated into organizational decision-making, including plans and decisions on capital improvements, product and process design, training programs, and maintenance activities.

ii. Requires establishing written targets, objectives, and action plans by at least each operating organizational subunit with environmental responsibilities, as appropriate, including those for contractor operations conducted at the facility, and how specified actions will be tracked and progress reported. Targets and objectives must include actions which reduce the risk of noncompliance with environmental requirements and minimizing the potential for unplanned releases.

i. Maintenance of Records and Documentation

i. Identifies the types of records developed in support of the EMS (including audits and reviews), who maintains them and where, appropriate security measures to prevent their unauthorized disclosure, and protocols for responding to inquiries and requests for release of information. Such records may include periodic reports routinely developed and filed by Cosmed as required by various regulatory agencies.

ii. Specifies the data management systems for any internal waste tracking, environmental data, and hazardous waste determinations.

iii. Specifies document control procedures.

j. Pollution Prevention Program: Describes an internal program for preventing, reducing, recycling, reusing, and minimizing waste and emissions, including procedures to encourage material substitutions. Also includes mechanisms for identifying candidate materials to be addressed by program and tracking progress.

k. Continuing Program Evaluation and Improvement

i. Describes program for periodic (at least annually) evaluation of the EMS, including incorporating the results of the assessment into program improvements, revisions to the EMS Manual, and communicating findings and action plans to affected employees, on-site service providers, and contractors.

ii. Describes a program for periodic audits (at least annually) of facility compliance with environmental requirements by an independent auditor(s). Audit results are reported to upper management and potential violations are addressed through the process described in element II.A.1.f., above.

l. Public Involvement/Community Outreach: Describes a program for ongoing community education and involvement in the environmental aspects of the organization's operations and general environmental awareness.

2. Included in the EMS shall be a system for safely managing ethylene oxide storage at all EMS Facilities. This system shall include standard operating procedures ("SOPs") for how, where, and when the ethylene oxide should be stored, moved, and used at each of the EMS Facilities, as well as who has the responsibility and authority for these tasks. The ethylene oxide SOPs shall be based on an analysis, conducted by Cosmed, of the following: the dangers of ethylene oxide; the manner in which it is stored at each of the EMS Facilities; the potential harm which could be caused to Cosmed employees and the surrounding community, including neighboring residences, businesses, and ecosystems by an accidental ethylene oxide release; and the potential causes of accidental ethylene oxide releases. If necessary (based on the analysis), Cosmed's EMS and ethylene oxide SOPs may need to include regular communication with emergency management planning authorities near each of the EMS Facilities, and/or procedures for notifying and evacuating neighboring residences and businesses in the event of a release.

3. Within 270 days of entry of this Consent Decree, Cosmed shall submit to EPA an

"Environmental Management System Manual" which shall describe and document the Comprehensive EMS developed pursuant to the Consent Decree and this Scope of Work and shall contain an EMS implementation schedule for each of the described operating procedures, formal systems, subsystems, and tasks not already implemented. For each of the 12 elements identified in Subparagraphs II.A.1.a. - II.A.1.l., inclusive, the EMS Manual shall describe the Comprehensive EMS in detail, by explaining how the activity or program is or will be: (a) established as a standard operating procedure, formal system, subsystem or task; (b) integrated into ongoing department operations; and (c) continuously evaluated and improved. The EMS Manual shall also describe respective management systems, subsystems, and tasks for each of the 12 elements identified in II.A.1.a. - II.A.1.l., herein.

4. The Defendant shall implement the EMS in accordance with the implementation schedule. The Defendant shall implement its EMS for at least one full EMS cycle. A full cycle of EMS implementation means that the EMS is developed, put into practice, audited for conformance with the EMS standard, reviewed by management (including review of audit results), and that any necessary adjustments to the EMS are made.

B. Selection of Independent Third-Party Auditor

Within 20 months of the date of entry of this Consent Decree, the Defendant shall select an Independent Third-Party Auditor who (a) meets the qualification requirements of ISO 19011 and (b) has expertise and competence in the regulatory programs under federal and state environmental laws. The Independent Third-Party Auditor shall be paid by the Defendant in an amount sufficient to fully carry out the EMS provisions of the Consent Decree and this Appendix A. The Independent Third-Party Auditor must not have a direct financial stake in the outcome of the EMS audit conducted pursuant to this Consent Decree and Attachment. The Independent Third-Party Auditor must be capable of exercising the same independent judgment and discipline that a certified public accounting firm would be expected to exercise in auditing a publicly held corporation. If the Defendant has any other contractual relationship with the Independent Third-Party Auditor, the Defendant shall disclose to EPA such past or existing contractual relationships.

C. EMS Audit Plan

1. Within 24 months of the date of entry of this Consent Decree, the Defendant shall require the Independent Third-Party Auditor to prepare an EMS Audit Plan which shall be followed during conduct of the EMS Audit performed pursuant to the Consent Decree and this Appendix A.

2. The Defendant shall direct the Independent Third-Party Auditor to concurrently submit the final EMS Audit Plan to EPA and the Defendant upon completion.

D. EMS Audit and Audit Report

1. The Defendant shall require the Independent Third-Party Auditor to conduct an EMS Audit to evaluate the adequacy of EMS implementation, from top management down, throughout each major organizational unit at each of the EMS Facilities, and to identify where further improvements should be made to the EMS. The EMS Audit shall be completed within 90 days of submission of the final EMS Audit Plan. The EMS Audit shall include at least one visit to each of the EMS Facilities, and shall be conducted in accordance with ISO 19011. The Independent Third-Party Auditor shall assess conformance with the elements specified herein and with the EMS Manual, and shall determine the following:

   a. Whether there is a defined system, subsystem, program, or planned task for the respective EMS element;
   b. To what extent the system, subsystem, program, or task has been implemented, and is being maintained;
   c. The adequacy of each operation's internal self-assessment procedures for programs and tasks composing the EMS;
   d. Whether the Defendant is effectively communicating environmental requirements to affected parts of the organization, contractors and on-site service providers;
   e. Whether further improvements should be made to the EMS;
   f. Whether there are observed deviations from the Defendant's written requirements or procedures;
   g. Whether continuous improvement is occurring; and
   h. Whether Cosmed's day-to-day activities (as well as the written SOPs) adequately minimize the possibility of ethylene oxide release and whether Cosmed is fully prepared to deal swiftly with an accidental release, should one occur.

2. The Defendant shall direct the Independent Third-Party Auditor to develop and concurrently submit an EMS Audit Report to the Defendant and EPA within 60 days following the completion of the on-site portion of the EMS audit. The Audit Report shall present the Audit Findings and shall, at a minimum, contain the following information:

   a. Audit scope, including the period of time covered by the audit;
   b. The date(s) the on-site portion of the audit was conducted;
   c. Identification of audit team members;

d. Identification of the Defendant's representatives observing the audit;
e. The distribution for the EMS Audit Report;
f. A summary of the audit process, including any obstacles encountered;
g. A summary of all observations identified as required under paragraph II.D.1., above;
h. Detailed Audit Findings, including the basis for each finding and each area of concern identified;
i. Identification of any Audit Findings corrected or areas of concern addressed during the audit, and a description of the corrective measures and when they were implemented; and,
j. Certification by the Independent Third-Party Auditor that the EMS Audit was conducted in accordance with the provisions of the Consent Decree and this Appendix A.

3. If the Independent Third-Party Auditor believes that additional time is needed to analyze available information or to gather additional information, the Defendant may request that EPA grant the Independent Third-Party Auditor such additional time as needed to prepare and submit the Audit Report. EPA's decision whether to grant additional time shall be final and unreviewable. At a minimum, the time required for EPA to reach a decision shall be granted.

4. Upon receiving the Audit Report, the Defendant shall conduct a root-cause analysis of the identified Audit Findings, as appropriate, and shall investigate all areas of concern. Within 60 days of receiving the Audit Report, the Defendant shall develop and submit to EPA an Action Plan for expeditiously bringing the EMS Facilities into full conformance with the EMS provisions and the EMS Manual, and fully addressing all areas of concern. The Action Plan shall include the result of any root cause analysis, specific deliverables, responsibility assignments, and an implementation schedule.

5. The Defendant shall implement the Action Plan in accordance with the schedules set forth therein.

6. Within 30 days after all items or activities in the Action Plan have been completed, the Defendant shall submit a written Action Plan Completion Certification to EPA signed by the company management, and the on-site manager(s) of each of the EMS Facilities.

APPENDIX B

U.S. v. Cosmed Group, Inc.

ENVIRONMENTAL COMPLIANCE AUDITS - SCOPE OF WORK

A. General Provisions

1. This Appendix provides for completion of an independent audit of the compliance status of each of the eight facilities currently or formerly operated in the United States by Cosmed Group, Inc. ("Cosmed"), namely, the six "Facilities," as specified in the Consent Decree, as well as Cosmed's sterilization facilities located at 2500 Brunswick Avenue in Linden, NJ and at 1225 East Greg Street in Sparks, NV (collectively, the "Audit Facilities"). The audit shall be completed to determine compliance, at each of the Audit Facilities, with the federal environmental statutes and their implementing regulations as well as the state and local analogues thereto, listed in paragraph A.3., below.

2. The audit shall include, but not be limited to, an evaluation of each facility's (a) operating procedures and practices; (b) sources of air pollutant emissions; (c) use and discharge of water; (d) generation, storage, handling, and disposal of hazardous waste; (e) air or water emissions control equipment; (f) operations and maintenance practices for any such controls; (g) monitoring, recordkeeping and reporting procedures; and (h) other relevant factors that may relate to Cosmed's compliance with the statutes, rules, permits, and regulations listed in paragraph A.3., below. Work required under the Audit SOW that was completed by the environmental consulting firm retained by Cosmed, TRC Environmental ("TRC"), and in accordance with the Audit SOW need not be repeated to comply with the Audit SOW. To complete the requirements of the Audit SOW, Cosmed shall retain one or more third party audit firms (which may include TRC) that meet the criteria set forth in the Audit SOW. To comply with the Audit SOW, the final Audit Report shall include information resulting from TRC work, as applicable, and that of any other audit firm(s) retained to complete the requirements of the Audit SOW.

3. The audit program shall be designed to assess regulatory compliance with the following statutes and their implementing regulations at each of the eight Audit Facilities:

   a. The Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.;
   b. The Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as amended;
   c. The Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended;
   d. The Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq., as amended;
   e. The Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., as amended;

f. The Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, including state implementation plan requirements approved by EPA under Section 110 of the Clean Air Act and relevant to the Audit Facilities;

g. The Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001 et seq., as amended;

h. The Safe Drinking Water Act, 42 U.S.C. § 330f et seq., as amended; and,

i. All other applicable state and/or local analogues of the federal statutes (and their implementing regulations) listed above.

4. The audit shall be conducted by an independent environmental auditing firm, retained by Cosmed. The audit firm shall concurrently submit a final report of its findings and recommendations to Cosmed and EPA.

5. The requirements of this Appendix relating to the audit firm's qualifications, authority to conduct the audit, and production of the final audit report shall be incorporated in any contract relating to the audit entered into by Cosmed and the audit firm.

6. Because this audit is required by the Consent Decree settling EPA's CAA enforcement action against Cosmed, any violations by Cosmed discovered pursuant to the audit are neither "voluntarily discovered" within the terms of EPA's revised Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations policy ("Audit Policy") nor voluntarily disclosed to EPA under EPA penalty policies. Accordingly, any such violations are ineligible for penalty mitigation or other favorable treatment under the Audit Policy. Cosmed agrees not to attempt to use any state audit and/or privilege laws that would in any way restrict EPA's ability to obtain, review or use the audit report in any federal compliance or enforcement action. Any violation by a transferee arising after the date of transfer at an Audit Facility previously but not currently owned and operated by Cosmed which is discovered pursuant to the audit may be eligible for disclosure within the terms of EPA's Audit Policy.

B. Audit Firm

1. Cosmed shall choose an audit firm which meets the criteria as set forth in paragraphs B.2. and B.3., below. Within 60 days of entry of the Consent Decree, Cosmed shall notify EPA in writing of its audit firm choice, including a description of the audit firm's qualifications, and the certification required by paragraph B.3., below. EPA shall have 30 days to accept or reject Cosmed's proposed audit firm. If EPA does not provide written notice to Cosmed of its determination within 30 days, Cosmed's proposed audit firm shall be deemed acceptable to EPA. If EPA rejects the proposed audit firm, Cosmed shall propose

one or more alternate audit firms for EPA's approval not later than 30 days after receipt of notice of EPA's determination.

2. The audit firm shall be familiar with environmental auditing, with the laws and regulations in paragraph A.3., above, and with state and local analogues relevant to each of the Audit Facilities.

3. Neither the audit firm, nor any person presently employed by the firm, shall have been employed by Cosmed to conduct an environmental audit or any other environmental compliance-related activities at the facility at any time during the 5 year period prior to August 2002. Cosmed shall require the audit firm to sign a certification to this effect.

C. Work Plan

Within 60 days of EPA's acceptance of Cosmed's proposed audit firm, Cosmed shall submit a draft work plan ("Audit Work Plan") to EPA for its review and approval. The Audit Work Plan shall enumerate each task comprising the audit, and set out a schedule by which each enumerated task will be performed at each of the eight Audit Facilities. EPA may reject the Audit Work Plan in whole or in part. Should EPA reject the Audit Work Plan or any portion of it, EPA may, in its sole discretion, require Cosmed to re-draft the Audit Work Plan in its entirety or any rejected portion of it. If EPA does not provide written notice to Cosmed of its determination within 45 days, Cosmed's proposed Audit Work Plan shall be deemed acceptable to EPA. Upon EPA's approval, the Audit Work Plan shall be incorporated into this Consent Decree and shall be enforceable hereunder.

D. On-Site Audit

Within 240 days of EPA's acceptance of the Audit Work Plan, the auditor shall conduct the on-site portion of the audit at each of the eight Audit Facilities.

E. Records Review and Audit Report

1. Cosmed shall take all necessary measures to facilitate the auditor in its full and independent assessment of the Audit Facilities in accordance with the approved Audit Work Plan.

2. Cosmed shall grant the auditor full access to, and unrestricted review of, all Cosmed records, documents and information, in its entirety, that the auditor requires to complete the audits. At any of the Audit Facilities previously but not currently owned or operated by Cosmed, Cosmed shall exercise its best efforts to

ensure that the new owner or operator grants the auditor full access to, and unrestricted review of, all facility records, documents and information, in its entirety, which the auditor requires to complete the audits. As used in this paragraph E.2., "best efforts" shall include, at a minimum, obtaining an agreement from the new owner or operator, as a condition of the sale, to provide such full and unrestricted access to information required by the auditor to complete the audits.

3. The auditor shall submit the Audit Report simultaneously to EPA and Cosmed within 75 days of completion of the on-site portion of the audit. Within 10 days of its receipt of the Audit Report, Cosmed shall submit the Audit Report to the new owner or operator of any of the Audit Facilities previously but not currently owned or operated by Cosmed.

4. At the request of EPA, Cosmed shall require the auditor to submit to EPA any documents reviewed or produced by the auditor pertaining to compliance at any of the Audit Facilities at the time of the audits.

5. The Audit Report shall describe in detail:
   a. The procedures followed and information consulted and evaluated during the audit;
   b. A specific statement of all violations discovered during the audit;
   c. The date(s) on which such violations commenced and were corrected; and
   d. Recommendations on actions that may be necessary to achieve compliance with the federal, state, and local environmental laws identified in the Audit Report.

6. Cosmed may, pursuant to 40 C.F.R. § 2.203(a), assert a business confidentiality claim covering all or part of the information contained in the Audit Report in the manner described in 40 C.F.R. § 2.203(b). However, information contained in the Audit Report noting conditions that may, in the sole judgment of EPA, constitute regulatory violations at any of the Audit Facilities shall not be claimed as confidential business information by Cosmed or its auditor.

7. Cosmed shall immediately correct any non-compliance identified in the Audit Report or otherwise discovered by Cosmed through the audit process that may potentially pose an imminent threat to human health or the environment. For any of the Audit Facilities previously but not currently owned or operated by Cosmed, Cosmed shall ensure that the new owner or operator receive actual notice of any non-compliance identified in the Audit Report or otherwise discovered through the audit process that may potentially pose an imminent threat to human health or the environment by, at a minimum, confirming receipt of the Audit Report

submitted by Cosmed to such new owner or operator under paragraph E.3, above.

8. Except for non-compliance at an Audit Facility previously but not currently owned or operated by Cosmed, no later than 45 days after the auditor's submission of the Audit Report, Cosmed shall submit to EPA a statement listing each item of non-compliance identified in the Audit Report and specifying the particular action(s) taken by Cosmed to correct it. If any non-compliance item has not yet been remedied, because the remedy requires more time to institute, a compliance schedule and plan shall be provided. A corporate officer, on behalf of Cosmed, shall certify to EPA in writing when correction of all such violations has been completed.

APPENDIX C

U.S. v. Cosmed Group, Inc.

SUPPLEMENTAL ENVIRONMENTAL PROJECTS - GENERAL PROVISIONS

1. Cosmed shall fully fund and ensure the satisfactory completion of the four supplemental environmental projects ("SEPs") described herein. These SEPs — the Camden Retrofit SEP, the Lake County Retrofit SEP, the San Diego SEP, and Dallas County Conversion SEP — are described in detail in Attachments C-1 through C-4, respectively, below.

2. For each SEP described in Attachments C-1 through C-4, Cosmed shall, no later than sixty (60) days from entry of the Consent Decree: (a) establish interest-bearing escrow accounts that meet all of the escrow requirements set forth herein and in Attachments C-1 through C-4; and (b) deposit the specified funding in each of the accounts. Cosmed shall authorize use of such deposited funds and any accrued interest as soon as practicable on the subsequent implementation of the SEPs, or as provided in Paragraphs 3 and 4, below.

3. If a force majeure event prevents Cosmed from completing or ensuring the completion of a SEP without expending all of the funds designated for the SEP's implementation in Attachments C-1 through C-4 below, Cosmed shall so notify EPA in accordance with Section IX of the Consent Decree. Upon EPA's agreement that the SEP cannot be satisfactorily completed, Cosmed shall halt work on the SEP, compute the amount of any funds (including accrued interest) designated for the SEP that have not been spent and, after obtaining agreement from EPA, direct such funds to another of the SEPs described in the Consent Decree, Appendix C, and Attachments C-1, C-2, C-3, or C-4, as applicable.

4. If Cosmed should perform and satisfactorily complete a SEP without expending all of the funds designated for the SEP's implementation in Attachments C-1 through C-4, Cosmed

shall so notify EPA in the SEP Completion Report required under the Consent Decree and state the amount of remaining unexpended funds, including accrued interest. Upon EPA's agreement that the SEP has been satisfactorily completed and sufficient opportunity remains for further implementation of another SEP under the Consent Decree, this Appendix C, and one or more of Attachments C-1 through C-4 hereto, Cosmed shall direct such funds to another of the SEPs described in the Consent Decree.

5. Notwithstanding the notice provisions set forth in the Consent Decree, whenever notifications, submissions, or communications regarding the Camden Retrofit SEP, the Lake County Retrofit SEP, the San Diego SEP, or the Dallas Conversion SEP are required by the Consent Decree, this Appendix C and/or any of the Attachments C-1, C-2, C-3, or C-4 hereto, for each respective SEP, such notification, submission, or communication shall be made in writing and addressed as follows:

For the Camden Retrofit SEP, to EPA Region 2 at:

Reema Persaud, Environmental Engineer
U. S Environmental Protection Agency, Region 2
290 Broadway, 25th Floor
New York, NY 10007

and

Mozafar (Mozey) Ghaffari, Environmental Engineer
U. S Environmental Protection Agency, Region 2
Division Of Enforcement and Compliance Assistance
290 Broadway, 21st Floor
New York, NY 10007

For the Lake County Retrofit SEP, to EPA Region 5 at:

Air Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
Attention: Compliance Tracker, AE-17J

For the Dallas Conversion SEP, to EPA Region 6 at:

Jim Yang (6EN-AT)
EPA Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

and

Barry Feldman (6PD-R)
EPA Region 6
1445 Ross Avenue
Dallas, TX 75202-2733

For the San Diego SEP, to EPA Region 9 at:

Daniel Reich
EPA Region 9
75 Hawthorne Street (RC-2-2)
San Francisco, CA 94105

and

For any and all SEPs, to EPA Region 1 at:

Rebecca Lynn Kurowski, Environmental Engineer
U.S. Environmental Protection Agency
Region 1 - New England
One Congress Street
Suite 1100 (Mail Code SEA)
Boston, MA 02114-2023

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1 - New England
One Congress Street
Suite 1100 (Mail Code SEL)
Boston, MA 02114-2023

6. Pursuant to Paragraph 23 of the Consent Decree, Cosmed is required to submit quarterly reports to EPA. In addition to the information required by Paragraph 23 of the Decree, for each SEP, the quarterly reports shall contain the following:

(a) a narrative description of the activities undertaken on each SEP to date;

(b) an itemization, with copies of supporting documentation, of the deposits made to each escrow account established for the respective SEP and/or of the costs expended or authorized by Cosmed to be expended on each SEP (including the expenditure or authorization for expenditure dates) during that quarterly period; and

(c) an explanation of any difficulties or delays in the implementation of the SEPs.

Cosmed shall continue to submit SEP-related information in the quarterly reports to EPA under the schedule established under Paragraph 23 of the Decree until all SEPs are certified complete under Paragraph 7 of this Appendix C or within sixty (60) days after three years from entry of the Consent Decree, whichever is earlier.

7. Within sixty (60) days after either the completion of each SEP or 60 days after three years from entry of the Consent Decree, whichever is earlier, Cosmed shall submit a separate SEP Completion Report to EPA. In addition to the information required pursuant to Paragraph

17 of the Consent Decree, each such Completion Report shall contain the following:

(a) a listing of the dates during which the project was implemented; and

(b) For all eligible SEP costs, itemized copies of purchase orders and receipts or canceled checks as well as a certified statement that Cosmed has not, and will not, use any SEP costs as, or in furtherance of, a tax deduction for Cosmed Group, Inc., or any of its corporate affiliates, under federal, state or local law. As such, Cosmed hereby specifically waives any confidentiality rights it has with respect to SEP costs on its tax returns and return information under 26 U.S.C. § 6103, as to EPA and the United States Department of Justice, solely for the purpose of ensuring the accuracy of the certification provided pursuant to this Subparagraph 7(b).

8. Following receipt of each SEP Completion Report, EPA will do one of the following:

(a) provide written notice that it accepts the SEP Completion Report;

(b) reject the SEP Completion Report and provide written notice to Cosmed of any deficiencies, and grant Cosmed an additional thirty (30) days, or such other time as EPA may in its sole and unreviewable discretion conclude is reasonable, in which to correct any deficiencies; or

(c) reject the SEP Completion Report and provide written notice to Cosmed of its failure to satisfactorily complete the SEP in accordance with the requirements of this Decree, and seek stipulated penalties as specified in the Consent Decree.

Cosmed may invoke the procedures set forth in Section X of the Consent Decree for disputes

regarding satisfactory performance of the SEP and the amount of eligible SEP costs, as provided in Paragraph 20 of the Consent Decree.

9. Cosmed agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives, from any and all claims or causes of action:

(a) arising from, or on account of, acts or omissions of Cosmed, Cosmed's officers, directors, employees, agents, contractors, subcontractors, receivers, trustees, successors or assigns, relating to the SEPs; and

(b) for damages or reimbursement arising from, or on account of, any contract, agreement, or arrangement between Cosmed and any persons or entities for performance of work on or relating to the SEPs.

10. Consistent with paragraph 55 of the Consent Decree, Cosmed shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA regarding any of the SEPs, and Cosmed shall provide the documentation of any such underlying research and data to EPA within seven (7) days of a request for such information.

11. For all certifications that Cosmed is required to make under this Appendix C or under Paragraph 21 or 26 of the Consent Decree relating to the performance and completion of the SEPs, Cosmed may place reasonable reliance on the accuracy of reports or other information provided to it by state or local authorities, or entities under contract with Cosmed or such authorities implementing the SEPs.

12. Cosmed shall not implement any of the four SEPs referenced herein or otherwise take any action required under the Consent Decree, Appendix C, or Attachments C-1, C-2, C-3, or C-4 for the purpose of advancing or advocating any Cosmed sales or marketing strategy. Reference herein to any type of product or technology is not intended and shall not be construed as an endorsement or approval by EPA any particular brand of such product or technology. Also, the involvement of any third party in the implementation of any of the four SEPs is not intended nor shall it be construed as a specific endorsement or approval by EPA of such third party or of any product or service provided by such third party.

ATTACHMENT C-1

U.S. v. Cosmed Group, Inc.

CAMDEN RETROFIT SEP

1. Introduction The Camden Retrofit SEP ("Camden SEP") involves reducing particulate matter and other harmful air pollutants from diesel engine exhaust by retrofitting, and supplying ultra-low sulfur diesel fuel for, diesel-fueled nonroad equipment and onroad vehicles. The vehicles and equipment covered by the Camden SEP are currently operated and maintained by the Camden County Municipal Utilities Association ("CCMUA") in its operation of the Camden County Regional Sewer Plant ("Plant") located in an area within the State of New Jersey known as Camden Waterfront South. The Plant handles the wastewater for thirty-seven (37) municipalities in Camden County, NJ.

2. Project Parameters The Camden SEP will involve: (a) retrofitting approximately 7 pieces of nonroad diesel equipment and 9 onroad diesel vehicles from among the vehicles and equipment listed in Tables 1 and 2 below with specific emission reduction devices, including EPA-verified diesel oxidation catalysts ("DOCs") or, where technically feasible, EPA-verified diesel particulate filters ("DPFs"); and (b) funding the incremental cost of #2 ultra-low sulfur diesel fuel ("ULSD No. 2"), i.e., diesel fuel with a sulfur content of less than or equal to 15 parts per million ("ppm"), if available, or less than 30 ppm, for use in CCMUA vehicles and equipment. Unless otherwise provided pursuant to Appendix C and this Attachment C-1, Cosmed shall spend a total of $210,000 to implement the Camden SEP (i.e., to retrofit, and supply ULSD No. 2 to, CCMUA vehicles and equipment used in operating the Plant). Subject to Cosmed's obligations pursuant to the Consent Decree regarding the expenditure of SEP eligible costs, to supply the ULSD No. 2 for use in CCMUA vehicles and equipment, Cosmed shall pay

any cost differential between current diesel fuel (i.e., diesel fuel with a sulfur content of less than 500 ppm) and ULSD No. 2 from the commencement of the Camden SEP until August 31, 2006. After August 31, 2006, the SEP funds shall not be used for ULSD No. 2. The Camden SEP shall be completed by no later than three (3) years from entry of the Consent Decree, or at another time mutually agreed upon by Cosmed and EPA, pursuant to Paragraph 70 of the Consent Decree.

3. Location and Technology The Camden SEP shall be implemented in Camden County, NJ. In order to provide the greatest long-term benefits under this program, the Camden SEP shall give preference for retrofitting vehicles and equipment which are operated and maintained within the Camden Waterfront South area, rather than vehicles and equipment that can be leased or otherwise moved outside the City of Camden or Camden County. The retrofits shall be performed on vehicles that are anticipated to remain in regular service for at least 3 years following the retrofit. The retrofits shall be performed using only EPA-verified retrofit technologies and equipment. In no event shall SEP funds be used for research or investigation of new or wholly undemonstrated retrofit technologies or applications, nor be used for testing of EPA-verified retrofit technologies and equipment.

4. Implementation Schedule The SEP shall be performed on the following schedule:

(a) On or before 60 days after entry of the Consent Decree, Cosmed shall establish an interest-bearing escrow account that meets the requirements of the Consent Decree, Appendix C, and this Attachment C-1. The escrow agreement shall incorporate provisions required by Paragraph 5 below and shall specifically identify Cosmed as the depositor, the non-profit group Northeast States for Coordinated Air Use Management ("NESCAUM") or another entity

proposed by Cosmed and agreed upon by EPA as beneficiary with authority to request that escrowed funds be released for activities within the scope of the Camden SEP, and a bank or other comparable commercial entity as escrow agent authorized to release funds upon specific authorization from the depositor, according to the conditions set forth in the escrow agreement.

(b) Prior to any authorization provided by Cosmed to the escrow agent to release funds for SEP implementation, Cosmed shall obtain from NESCAUM and submit to EPA, in writing, the following information relative to such proposed authorization: (i) a list of vehicles and equipment to be retrofitted and/or provided ULSD No. 2, from among the vehicles and equipment listed in Tables 1 and 2 herein, as part of the Camden SEP, along with a listing, for each, of the location(s) at which each is garaged and fueled, the Horsepower (Hp), the annual miles or hours of operation, and the projected number of years remaining in service; (ii) a schedule for the contracting and purchase of the DOCs and DPFs and for the installation of the retrofits on the vehicles and equipment in accordance with Subparagraphs 4(c) and 4(d) below; (iii) a schedule for the contracting, purchase and supply of ULSD No. 2 under the Camden SEP; (iv) an estimate of the costs associated with retrofitting and providing ULSD No. 2 under the Camden SEP; and (v) for any request to release escrowed funds in an amount below that which remains in the escrow at the time of the request, a statement indicating whether additional requests for release of escrowed funds are anticipated for the Camden SEP. Prior to providing any authorization to the escrow agent to release funds for SEP implementation, Cosmed shall also review all contracts with vendors involved in implementation, including any and all contracts pertaining to equipment and/or labor for retrofits under the Camden SEP.

(c) On or before 180 days after entry of the Consent Decree, Cosmed shall exercise best efforts to ensure that the retrofitting of the vehicles and equipment identified pursuant to Subparagraph 4(b) has commenced. Cosmed shall exercise best efforts to ensure that the retrofits are performed as quickly as possible on a schedule that is most protective of the affected populations living near where the vehicles and equipment are used.

(d) Cosmed shall ensure that, on or before 60 days after three (3) years from entry of the Consent Decree, the retrofitting of all of vehicles and equipment identified in Subparagraph 4(b) has been completed, to the extent that such work can be completed for no more than the amount specified in Subparagraph 5, below, and any amounts directed to the Camden SEP pursuant to Paragraph 4 of Appendix C.

5. Escrow In addition to the escrow requirements in Appendix C, the following requirements are applicable to the Camden SEP: (a) The escrow account established by Cosmed for the Camden SEP shall be an interest bearing escrow account with Citizens Bank of Rhode Island ("Bank") in the amount of TWO HUNDRED TEN THOUSAND DOLLARS ($210,000). The escrow account instructions shall limit and restrict the use of the escrowed funds to retrofitting, and supplying ULSD No. 2 for, diesel-fueled nonroad equipment and onroad vehicles operated and maintained by the CCMUA in its operation of the Plant. Notwithstanding the preceding sentence, the escrow account instructions may allow for use of escrowed funds to cover administrative or other implementation expenses incurred by NESCAUM relative to the Camden SEP *provided* that the total funds allowed for such use do not exceed $28,034. Cosmed shall communicate to NESCAUM in writing, and the escrow instructions shall reflect, that any

payments to NESCAUM from the escrow, up to a total of $210,000, plus any interest earned, are conditioned on NESCAUM's spending the funds on activities specifically contemplated by the Consent Decree, Appendix C, and this Attachment C-1, namely, the following: (i) purchase and installation of diesel oxidation catalysts ("DOCs") and/or diesel particulate filters ("DPFs") to retrofit approximately 7 pieces of nonroad diesel equipment and approximately 9 onroad diesel vehicles operated and maintained by the CCMUA and chosen from the vehicles and equipment listed in Tables 1 and 2 herein; and, (ii) funding the incremental cost of ULSD No. 2 for use in CCMUA vehicles and equipment. The escrow instruction shall also provide that, where there are remaining, unexpended escrow funds originally intended for the Camden SEP and no longer needed for the Camden SEP, such remainders shall, upon agreement by EPA, be directed to another of the SEPs described in the Consent Decree, Appendix C, and Attachments C-2, C-3, and C-4, in accordance with the terms of the Decree, Appendix C, and the Attachments thereto.

(b) Cosmed shall send a copy of the Consent Decree with all Appendices and Attachments to NESCAUM and the CCMUA, within ten (10) days of its entry by this Court, at the addresses listed below. To receive funding authorization, NESCAUM must provide Cosmed with all of the information required by Subparagraph 4(b) of this Attachment. Cosmed shall provide EPA with a copy of such information and, within thirty (30) days of EPA's receipt, EPA shall contact Cosmed if EPA objects to the release of funds to NESCAUM because EPA believes that the information shows the proposed escrow withdrawal is inconsistent with the requirements pertaining to the use of escrowed funds, as set forth in the Consent Decree, Appendix C, and this Attachment C-1. If Cosmed finds the proposed withdrawal consistent with this settlement and

receives no objection from EPA within EPA's review period, Cosmed shall instruct the Bank to release the requested funds to NESCAUM. Each time Cosmed instructs the Bank to release funds to NESCAUM, Cosmed shall, within thirty (30) days, notify EPA of the date that Cosmed sent the instructions and the amount of funds to be released and provide EPA a copy of the instructions to the Bank.

(c) Cosmed shall specify in the escrow instructions that authorization for the release of funds may only be given by Cosmed after NESCAUM has presented a certification to Cosmed that bears the signature of the Executive Director of NESCAUM and certifies that: (i) funds to be withdrawn will be used as contemplated by the Consent Decree, Appendix C, and this Attachment C-1; (ii) all prior withdrawals have been used for authorized purposes; and, (iii) the certification has been served by mail on EPA Regions 1 and 2, the CCMUA, and the Bank.

(d) The escrow agreement shall specify that NESCAUM must draw upon all funds in the escrow account, including any accrued interest, or that any unexpended escrow funds must be directed to another of the SEPs pursuant to Subparagraph 5(a), above, on or before three (3) years of entry of the Consent Decree and in accordance with Paragraphs 2 through 4 of Appendix C. The escrow agreement shall provide that any and all funds remaining in the escrow account, including interest, after that 3 year period shall be remitted by the escrow agent, within thirty (30) days, to the U.S. Treasury as a stipulated penalty in accordance with the procedures set forth in Section VIII of the Consent Decree.

6. Addresses Unless otherwise agreed to by Cosmed and EPA, the following shall be the addresses used for NESCAUM and the CCMUA:

Northeast States for Coordinated Air Use Management
101 Merrimac Street
Boston, MA 02114
Attention: Coralie Cooper

Camden County Municipal Utilities Association
1645 Ferry Avenue
Camden, NJ 08104
Attention: Andrew Kricun

Table 1. Nonroad Diesel Equipment

VEH	YEAR	SERIAL#	DESCRIPTON	COST NEW
123	1980	81J12927	CATERPILLER 950 LOADER	
138	1979	D8143	6" GODWIN PUMP	$16,000
162	1986	2521A2104	MIF. BACKHOE	$30,825
172	1987	853014	6" GORMAN-RUPP PUMP	$25,000
178		681273-X	6" GODWIN PUMP	$22,000
179		881274	12" GODWIN PUMP	$50,000
198	1977	4630-SG1-119441R	JOHN DEERE MODEL .4630	
207		185915-U90-365	INGERSOLL RAND 250AC	$9,000
217	1992	509313466	BOBCAT 743B	$17,850
218	1992	509313474	BOBCAT 743B	$17,850
247	1994	914891-15	8" GODWIN PUMP PORTABLE	
262	1995	BD97145	FORD 6640 MODEL	$52,430
269	1996	3323X156	LEROI AIR COMP. Q185DJ-E	$9,974
271	1995	1KM01081	CAT. 938F LOADER	$140,000
272	1994	1063395	4" GORMAN-RUPP PUMP	
276	1995	66K-1370	CAT. 312 EXCAVATOR	$87,177
289	1996	12043	KUBOT MINI EXCAVATOR MODEL KX101	
293	1995	345104	GROVE MANLIFT MODEL AMZ131XT	$186,618
295	1994	7912631	3" GORMAN-RUPP PUMP	
296	1997	10026	KUBOT R-420 LOADER	
304	1985	360034	COBEY AUGER DRYER &COMPOSTER	12,000.00
306	1999	3SW00517	966G CATERPILLER LOADER	226,200
307	1999	3JW01284	950G CATERPILLER LOADER	169,965
308	1989	64263	OTTAWA SERIES 30 YARD JOCKEY	12,750
309	2000	300109	OTTAWA SERIES 50 YARD JOCKEY	54,967

Table 2. Onroad Diesel Vehicles

VEH	YEAR	TAG.#	REG	SERIAL#	GVW	DESCRIPTION	COST NEW
145	1985	XG66EY	DEC	TLCHYNXFHA16189	30,200	INTERNATIONAL TANK TRUCK	$65,000.00
152	1985	XJ18RM	DEC	1FDYR80U6FVA73164	40,000	FORD JET-RODDER	$90,000.00
176	1989	XY39NY	DEC	1FDYU90W2KA19750	80,000	FORD TRACTOR	$56,400.00
196	1990	XT78WC	JUNE	1FDPK84P3LVA42891	28,000	FORD 5CY DUMP	$28,800.00
264	1995	XY31NW	MAY	1FDKF37F9SNB09206	15,000	FORD BUCKET TRUCK	
265	1995	XY81NW	JULY	1FDYW82E95VA72101	52,000	FORD L-8000 AQUATECH	$150,000.00
277	1995	XY81NX	SEPT	1FTZY90U3SVA84196	80,000	FORD TRACTOR	$69,477.00
278	1995	XY79NX	SEPT	1FTZY90UISVA84195	80,000	FORD TRACTOR	$69,477.00
280	1996	XY40NY	OCT	2FDKF38F6TCA10588	11,000	FORD 2YD DUMP	$34,503.00
290	1996	XZ18UA	MAR	1FDZY90U4TVA25882	80,000	FORD 30YD DUMP	$88,690.00
291	1997	XZ22TZ	JULY	1FDZY90UXVVA15893	80,000	FORD ROLLOFF	$86,300.00
292	1996	X16S37	SEPT	2FDKF38FXTCA56909	11,000	FORD 2YD DUMP	$43,678.00
310	2001	X1747D	NOV.	2FWJAZBD91AJ14011	80,000	STERLING TRACTOR	$79,640.00
311	2001	X1745D	NOV.	1FTSF30F91EB03371	10,000	FORD F-350 PICKUP	$24,198.00
313	2001	X1783D	DEC.	1FTNF21FX1EB03370	9,000	FORD F-250 4WD UTILITY W/PLOW	$37,197.00
316	2001	X1791D	DEC.	1FTNF21F31EB03369	8,600	FORD F-250 4WD UTILITY W/PLOW	$37,197.00
322	1999	X1813D	JAN.	2FZNNXYB8XAA51806	80,000	STERLING 30 YD. DUMP TRUCK	$99,975.00
323	2001	X1842D	FEB.	2FZAAHAL71AJ15969	25,500	STERLING UTILITY body	$89,495.00
324	2001	X9100K	MAR.	2FZAAHAL11AJ14025	25,500	STERLING UTILITY BODY	$89,495.00
334	2002	X9395K	OCT.	2FZMAZBDX2AJ83212	80,000	STERLING ROLL-OFF	$99,905.00
337	2002	X9510K	JAN.	2FZHAZBD92AJ53152	80,000	STERLING CRANE TRUCK	$150,000.00
342	2003	X6668R	SEPT.	1FTSF31F13EA62901	10,000	FORD F350 4X4 UTILITY W/PLOW	$49,576.00
343	2003	X6667R	SEPT.	1FTSE34F13HA21942	10,000	FORD E350 ECONOLINE VAN	$28,696.00

ATTACHMENT C-2

U.S. v. Cosmed Group, Inc.

LAKE COUNTY RETROFIT SEP

1. Introduction The Lake County, Illinois Retrofit SEP ("Lake County SEP") involves reducing particulate matter and other harmful air pollutants from diesel engine exhaust by retrofitting, and supplying lower sulfur diesel fuel for, diesel-fueled nonroad equipment and onroad vehicles other than school buses. The vehicles and equipment covered by the Lake County SEP include those currently operated and maintained by municipal governments, excluding diesel-powered school buses, within Lake County, Illinois and, especially, vehicles and equipment operating in, or otherwise impacting, communities comprising sensitive populations. For purposes of this Attachment C-2 and the Lake County SEP, sensitive populations mean low income and/or minority populations.

2. Project Parameters The Lake County SEP will involve: (a) retrofitting nonroad diesel equipment and onroad diesel vehicles with specific emission reduction devices, including EPA-verified diesel oxidation catalysts ("DOCs") or, where technically feasible, EPA-verified diesel particulate filters ("DPFs"); and (b) funding the incremental cost of #2 ultra-low sulfur diesel fuel ("ULSD No. 2") (i.e., diesel fuel with a sulfur content of less than or equal to 15 parts per million ("ppm")) for use in onroad vehicles, if available, and/or the incremental cost of onroad diesel fuel (i.e. diesel fuel with a sulfur content of less than or equal to 500 ppm) for nonroad equipment, if available. Unless otherwise provided pursuant to Appendix C and this Attachment C-2, Cosmed shall spend a total of $251,000 to implement the Lake County SEP (i.e., to retrofit, and/or supply lower sulfur fuel to, vehicles and equipment in Lake County). Subject to Cosmed's obligations pursuant to the Consent Decree regarding the expenditure of

SEP eligible costs, to supply the ULSD No. 2 for use in Lake County vehicles and equipment, Cosmed shall pay any cost differential between current diesel fuel (i.e., diesel fuel with a sulfur content of less than 500 ppm) and ULSD No. 2 from the commencement of the Lake County SEP until August 31, 2006. After August 31, 2006, the SEP funds shall not be used for ULSD No. 2 for onroad vehicles. To supply onroad diesel fuel for use in nonroad equipment in Lake County, Cosmed shall pay any cost differential between current diesel fuel (i.e., nonroad diesel fuel with a sulfur content of less than 3,400 ppm) and diesel fuel with a sulfur content of less than 500 ppm until December 31, 2006. After December 31, 2006, the SEP funds shall not be used to supply onroad diesel fuel for use in nonroad equipment. The Lake County SEP shall be completed by no later than one (1) year from entry of the Consent Decree, or at another time mutually agreed upon by Cosmed and EPA, pursuant to Paragraph 70 of the Consent Decree.

3. Location and Technology The Lake County SEP shall be implemented in Lake County, IL. In order to provide the greatest long-term benefits under this program, the Lake County SEP shall give preference for retrofitting vehicles and equipment which are operated and maintained within areas comprising sensitive populations in closer proximity to the Cosmed facility in Waukegan, IL, rather than vehicles and equipment that may be leased or otherwise moved outside Lake County. The retrofits shall be performed on vehicles that are anticipated to remain in regular service for at least 3 years following the retrofit. The retrofits shall be performed using only EPA-verified retrofit technologies and equipment. In no event shall SEP funds be used for research or investigation of new or wholly undemonstrated retrofit technologies or applications, nor be used for testing of EPA-verified retrofit technologies and equipment.

4. Implementation Schedule The Lake County SEP shall be performed on the following schedule:

(a) On or before 60 days after entry of the Consent Decree, Cosmed shall establish an interest-bearing escrow account that meets the requirements of the Consent Decree, Appendix C, and this Attachment C-2. The escrow agreement shall incorporate provisions required by Paragraph 5 below and shall specifically identify Cosmed as the depositor, the non-profit group the Metropolitan Mayors Caucus ("MMC") or another entity proposed by Cosmed and agreed upon by EPA as intermediary with authority to request that escrowed funds be released by Cosmed to vendors for activities within the scope of the Lake County SEP, and a bank or other comparable commercial entity as escrow agent authorized to release funds upon specific authorization from the depositor, according to the conditions set forth in the escrow agreement.

(b) Prior to any authorization provided by Cosmed to the escrow agent to release funds for SEP implementation, Cosmed shall obtain from the MMC and submit to EPA, in writing, the following information relative to such proposed authorization: (i) a list of vehicles and equipment to be retrofitted and/or provided lower sulfur fuel as part of the Lake County SEP, along with a listing, for each, of the location(s) at which each is garaged and fueled, the Horsepower (Hp), the annual miles or hours of operation, and the projected number of years remaining in service; (ii) a schedule for the contracting and purchase of the DOCs and DPFs and for the installation of the retrofits on the vehicles and equipment in accordance with Subparagraphs 4(c) and 4(d) below; (iii) a schedule for the contracting, purchase and supply of lower sulfur fuel under the Lake County SEP; (iv) an estimate of the costs associated with

retrofitting and providing lower sulfur fuel under the Lake County SEP; and (v) for any request to release escrowed funds in an amount below that which remains in the escrow at the time of the request, a statement indicating whether additional requests for release of escrowed funds are anticipated for the Lake County SEP. Prior to providing any authorization to the escrow agent to release funds for SEP implementation, Cosmed shall also review all contracts with vendors involved in SEP implementation, including any and all contracts pertaining to equipment and/or labor for retrofits under the Lake County SEP.

(c) On or before 90 days after entry of the Consent Decree, Cosmed shall exercise best efforts to ensure that the retrofitting of the vehicles and equipment identified pursuant to Subparagraph 4(b) has commenced. Cosmed shall exercise best efforts to ensure that the retrofits are performed as quickly as possible on a schedule that is most protective of the affected populations living near where the vehicles and equipment are used.

(d) Cosmed shall ensure that, on or before one (1) year from the date of entry of the Consent Decree, the retrofitting of all of vehicles and equipment identified in Paragraph 4(b) has been completed, to the extent that such work can be completed for no more than the amount specified in Subparagraph 5, below, and any amounts directed to the Lake County SEP pursuant to Paragraph 4 of Appendix C.

5. Escrow In addition to the escrow requirements in Appendix C, the following requirements are applicable to the Lake County SEP: (a) The escrow account established by Cosmed for the Lake County SEP shall be an interest bearing escrow account with Citizens Bank of Rhode Island ("Bank") in the amount of TWO HUNDRED FIFTY-ONE THOUSAND

DOLLARS ($251,000). The escrow account instructions shall limit and restrict the use of the escrowed funds to retrofitting, and supplying lower sulfur fuel for, diesel-fueled nonroad equipment and onroad vehicles other than school buses operated and maintained by municipalities within Lake County. Notwithstanding the preceding sentence, the escrow account instructions may allow for use of escrowed funds to cover administrative or other implementation expenses incurred by an entity other than the MMC that is proposed by Cosmed and agreed upon by EPA pursuant to Subparagraph 4(a) above and has authority to request the release of escrowed funds, *provided* that such expenses are directly related to the Lake County SEP and the total amount allowed for such expenses does not exceed 10% of the total escrowed funds still available for the Lake County SEP as of the date such other entity is proposed under Subparagraph 4(a). Cosmed shall communicate to the MMC in writing, and the escrow instructions shall reflect, that any payments from the escrow to vendors, up to a total of $251,000, plus any interest earned, are conditioned on the funds being spent on activities specifically contemplated by the Consent Decree, Appendix C, and this Attachment C-2, namely, the following: (i) purchase and installation of EPA-verified diesel oxidation catalysts ("DOCs") and/or diesel particulate filters ("DPFs") to retrofit nonroad diesel equipment and onroad diesel vehicles operated and maintained by municipalities within Lake County; and, (ii) funding the incremental cost of lower sulfur fuel for use in Lake County vehicles and equipment. The escrow instruction shall also provide that, where there are remaining, unexpended escrow funds originally intended for the Lake County SEP 1 year after entry of the Consent Decree and no longer needed for the Lake County SEP, such remainders shall, upon agreement by EPA, be

directed to another of the SEPs described in the Consent Decree, Appendix C, and Attachments C-1, C-3, and C-4, in accordance with the terms of the Decree, Appendix C, and the Attachments thereto.

(b) Cosmed shall send a copy of the Consent Decree with all Appendices and Attachments to the MMC and the Illinois Environmental Protection Agency ("IEPA"), within ten (10) days of its entry by this Court, at the addresses listed below. To receive funding authorization, the MMC must provide Cosmed with all of the information required by Subparagraph 4(b) of this Attachment. Cosmed shall provide EPA with a copy of such information and, within thirty (30) days of EPA's receipt, EPA shall contact Cosmed if EPA objects to the release of funds because EPA believes that the information shows the proposed escrow withdrawal is inconsistent with the requirements pertaining to the use of escrowed funds, as set forth in the Consent Decree, Appendix C, and this Attachment C-2. If Cosmed finds the proposed withdrawal consistent with this settlement and receives no objection from EPA within EPA's review period, Cosmed shall instruct the Bank to release the requested funds to the vendors based on the information provided by the MMC in paragraph 4(b). Each time Cosmed instructs the Bank to release funds, Cosmed shall notify EPA of the date that Cosmed sent the instructions and the amount of funds to be released. Cosmed shall send its notification to EPA within thirty (30) days of the date it sent the instructions to the Bank.

(c) Cosmed shall specify in the escrow instructions that authorization for the release of funds to identified vendors may only be given by Cosmed after the MMC has presented a certification to Cosmed that bears the signature of the Executive Director of the MMC and

certifies that: (i) funds to be withdrawn will be used as contemplated by the Consent Decree, Appendix C, and this Attachment C-2; (ii) all prior withdrawals have been used for authorized purposes; and, (iii) the certification has been served by mail on EPA Regions 1 and 5, the IEPA, and the Bank.

(d) The escrow agreement shall specify that the MMC must seek release by Cosmed of all funds in the escrow account, including any accrued interest, for payments to vendors identified by the MMC on or before one (1) year after entry of the Consent Decree and in accordance with Paragraphs 2 through 4 of Appendix C. The escrow agreement shall provide that any and all funds remaining in the escrow account, including interest, after the 1 year period shall be directed by the escrow agent, within thirty (30) days, to one of the other SEPs described in the Consent Decree, Appendix C, and Attachments C-1, C-3, and C-4 and specified by Cosmed or, if no other SEP is available for further funding, shall be remitted by the escrow agent, within 30 days, to the U.S. Treasury as a stipulated penalty in accordance with the procedures set forth in Section VIII of the Consent Decree and Subparagraph 5(a) of this Attachment C-2.

6. Addresses Unless otherwise agreed to by Cosmed and EPA, the following shall be the addresses used for the MMC and IEPA:

Metropolitan Mayors Caucus
177 North State Street
Chicago, IL 60601
312-201-4508
312-553-4355 fax
Attention: Kate Agasie

Julie Armitage, Acting Section Manager
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois, 62072

ATTACHMENT C-3

U.S. V. Cosmed Group, Inc.

SAN DIEGO SEP

1. Introduction The San Diego Supplemental Environmental Project ("San Diego SEP") involves reducing particulate matter and other harmful air pollutants from diesel engine exhaust by installing emission controls on, and supplying ultra-low sulfur diesel fuel ("ULSD") for, diesel-fueled nonroad equipment, locomotive head end power units ("HEP units") and onroad vehicles other than school buses. The vehicles and equipment covered by the San Diego SEP are currently operated and maintained by the Port of San Diego, the City of San Diego, and the North County Transit Coaster Service (collectively, the "Project Venues"). The San Diego SEP is located in two areas within the State of California known as the Oceanside and Barrio Logan communities, each of which contains large numbers of low-income residents and is considered a potential environmental justice area of concern.

2. Project Parameters The San Diego SEP will involve: (a) installing pollution controls on nonroad diesel equipment and onroad diesel trucks with demonstrated control technologies such as diesel particulate filters ("DPFs") and diesel oxidation catalysts ("DOCs"); (b) controlling emissions from approximately three HEP units operated by the North County Transit Coaster Service with DPFs, DOCs and/or selective catalytic reduction ("SCR"); and (c) funding the incremental cost of ULSD for use at the Project Venues, as determined to be necessary. For purposes of the San Diego SEP and this Attachment C-3, ULSD is diesel fuel with a sulfur content of less than or equal to 15 parts per million ("ppm"). Unless otherwise provided pursuant to Appendix C and this Attachment C-3, Cosmed shall spend a total of $357,000 to implement the San Diego SEP. Subject to Cosmed's obligations pursuant to the Consent Decree

regarding the expenditure of SEP eligible costs, to supply the ULSD for use in onroad and nonroad vehicles and other equipment, Cosmed shall pay the cost differential between California Air Resources Board ("CARB") required diesel fuel and ULSD from the commencement of the San Diego SEP until August 31, 2006. After August 31, 2006, the SEP funds shall not be used for ULSD. The San Diego SEP shall be completed by no later than three (3) years from entry of the Consent Decree or, notwithstanding such 3-year time frame set forth in Appendix C or this Attachment C-3, at another time mutually agreed upon by Cosmed and EPA, pursuant to Paragraph 70 of the Consent Decree.

3. Location and Technology The San Diego SEP shall be implemented in San Diego, CA. In order to provide the greatest long-term benefits under this program, the San Diego SEP shall give preference for controlling emissions from vehicles and equipment which are operated within the Barrio Logan area or the Oceanside Community area, rather than vehicles and equipment that may be leased or otherwise moved outside the City of San Diego or San Diego County. The controls shall be installed on vehicles, equipment and HEP units that are anticipated to remain in regular service for at least 3 years following installation. The San Diego SEP shall involve installation of only demonstrated emission control technologies and equipment. In no event shall San Diego SEP funds be used for research or investigation of new or wholly undemonstrated control technologies or new or wholly undemonstrated applications on engines, nor be used for testing of EPA-verified control technologies and equipment.

4. Implementation Schedule The SEP shall be performed on the following schedule:

(a) On or before 60 days after entry of the Consent Decree, Cosmed shall establish an

interest-bearing escrow account that meets the requirements of the Consent Decree, Appendix C, and this Attachment C-3. The escrow agreement shall incorporate provisions required by Paragraph 5 below and shall specifically identify Cosmed as the depositor, a bank or other comparable commercial entity as escrow agent authorized to release funds upon specific authorization from the depositor, according to the conditions set forth in the escrow agreement, and the San Diego Air Pollution Control District or another entity proposed by Cosmed and agreed upon by EPA (hereinafter referred to as the "District") as the party with authority to request that the depositor authorize the release of escrowed funds for activities within the scope of the San Diego SEP.

(b) Prior to any authorization provided by Cosmed to the escrow agent to release funds for SEP implementation, Cosmed shall obtain from the District and submit to EPA, in writing, the following information relative to such proposed authorization: (i) a list of vehicles and equipment to be controlled and/or provided ULSD as part of the San Diego SEP, along with a listing, for each, of the location(s) at which each is garaged and fueled, the Horsepower (Hp), the estimated annual miles or hours of operation, and the projected number of years remaining in service; (ii) a schedule for the contracting and purchase of control technologies and for the installation and maintenance of the vehicles and equipment in accordance with Subparagraphs 4(c) and 4(d) below; (iii) a schedule for the contracting, purchase and supply of ULSD under the San Diego SEP; (iv) an estimate of the costs associated with the San Diego SEP including, as applicable, itemized receipts and a detailed breakdown of expenses; and (v) for any request to release escrowed funds in an amount below that which remains in the escrow at the time of the

request, a statement indicating whether additional requests for release of escrowed funds are anticipated at Project Venues for the San Diego SEP. Prior to providing any authorization to the escrow agent to release funds for SEP implementation, Cosmed shall also review all contracts with vendors involved in implementation, including any and all contracts pertaining to control equipment and/or labor for installation of controls under the San Diego SEP.

(c) On or before 180 days of entry of the Consent Decree, Cosmed shall exercise best efforts to ensure that the controlling of vehicles and equipment identified pursuant to Subparagraph 4(b) has commenced. Cosmed shall exercise best efforts to ensure that the controls are installed as quickly as possible on a schedule that is most protective of the affected populations living near where the vehicles and equipment are used.

(d) Cosmed shall ensure that, on or before 60 days after three (3) years from entry of the Consent Decree, the controlling of all of vehicles and equipment identified in Paragraph 4(b) has been completed, to the extent that such work can be completed for no more than the amount specified in Subparagraph 5, below, and any amounts directed to the San Diego SEP pursuant to Paragraph 4 of Appendix C.

5. Other Escrow Requirements In addition to the escrow requirements in Appendix C and Paragraph 4 above, the following requirements are applicable to the San Diego SEP: (a) The escrow account established by Cosmed for the San Diego SEP shall be an interest bearing escrow account with Citizens Bank of Rhode Island ("Bank") in the amount of THREE HUNDRED FIFTY-SEVEN THOUSAND DOLLARS ($357,000). The escrow account instructions shall limit and restrict the use of the escrowed funds to purchasing and installing controls on, and

providing routine maintenance and ULSD for, diesel-fueled onroad and nonroad vehicles and equipment (other than school buses) and HEP units operated and maintained by the City of San Diego, the Port of San Diego, and the North County Transit Coaster Service. Notwithstanding the preceding sentence, the escrow account instructions may allow for use of escrowed funds to cover administrative, oversight or other implementation expenses incurred by the District relative to the San Diego SEP, *provided* that the total funds allowed for reimbursement to the District for such expenses does not exceed $10,000. The escrow account instructions may also allow for use of escrowed funds to cover evaluation of operational or emissions data, reporting requirements, and assessment of technologies demonstrated on engines, but not previously demonstrated on the size or type of engine, or duty cycle, to which it is applied in the San Diego SEP, *provided* that the total funds allowed for such activities does not exceed $60,000. Cosmed shall communicate to the District in writing, and the escrow instructions shall reflect, that any payments to the District from the escrow, up to a total of $357,000, plus any interest earned, are conditioned on the District spending the funds on activities specifically contemplated by the Consent Decree, Appendix C, and this Attachment C-3. The escrow instruction shall also provide that, where there are remaining, unexpended escrow funds originally intended for the San Diego SEP and no longer needed for any of the Project Venues of the San Diego SEP, such remainders shall, upon agreement by EPA, be directed to another of the SEPs described in the Consent Decree, Appendix C, and Attachments C-1, C-2, and C-4, in accordance with the terms of the Decree, Appendix C, and the Attachments thereto.

(b) Cosmed shall send a copy of the Consent Decree with all Appendices and

Attachments to the District, within ten (10) days of its entry by this Court, at the addresses listed below. To receive funding authorization, the District must provide Cosmed with all of the information required by Subparagraph 4(b) of this Attachment. Cosmed shall provide EPA with a copy of such information and, within thirty (30) days of EPA's receipt, EPA shall contact Cosmed if EPA objects to the release of funds to the District because EPA believes that the information shows the proposed escrow withdrawal is inconsistent with the requirements pertaining to the use of escrowed funds, as set forth in the Consent Decree, Appendix C, and this Attachment C-3. If Cosmed finds the proposed withdrawal consistent with this settlement and receives no objection from EPA within EPA's review period, Cosmed shall instruct the Bank to release the requested funds to the District. Each time Cosmed instructs the Bank to release funds to the District, Cosmed shall notify EPA of the date that Cosmed sent the instructions and the amount of funds to be released. Cosmed shall send its notification to EPA within thirty (30) days of the date it sent the instructions to the Bank.

(c) Cosmed shall specify in the escrow instructions that authorization for the release of funds may only be given by Cosmed after the District has presented a certification to Cosmed that bears the signature of the Director of the District and certifies that: (i) funds to be withdrawn will be used as contemplated by the Consent Decree, Appendix C, and this Attachment C-3; (ii) all prior withdrawals have been used for authorized purposes; and, (iii) the certification has been served by mail on EPA Regions 1 and 9, and the Bank.

(d) The escrow agreement shall specify that the District must draw upon all funds in the escrow account, including any accrued interest, or that any unexpended escrow funds must be

directed to another of the SEPs pursuant to Subparagraph 5(a), above, on or before three (3) years of entry of the Consent Decree and in accordance with Paragraphs 2 through 4 of Appendix C. The escrow agreement shall provide that any and all funds remaining in the escrow account, including interest, after that 3 year period shall be remitted by the escrow agent, within thirty (30) days, to the U.S. Treasury as a stipulated penalty in accordance with the procedures set forth in Section VIII of the Consent Decree.

6. Anticipated Roles and Responsibilities The following is anticipated with respect to implementation of the San Diego SEP: (a) the role of the District will be to provide oversight of San Diego SEP activities at each of the Project Venues and such oversight will include, for example, issuing Requests for Proposals ("RFPs") to contractors regarding implementation of the San Diego SEP; (b) for each RFP, the contractor will specify vehicles and equipment into which they intend to install controls and, for each vehicle and piece of equipment, describe the control technology proposed for installation and the process for removal of existing exhaust system components and installation of controls; (c) preference will be given to installing demonstrated control technologies capable of achieving CARB level 3 particulate matter reductions of 85 percent or .01 gram per brake-horsepower hour, operating on only ULSD fuel (less than 15 parts per million of sulfur), and having a minimum horsepower of 50; (d) where the District determines that a specific control technology is not feasible for a vehicle or piece of equipment (e.g., due to vehicle/equipment age), the District will have discretion to recommend an alternative control technology to Cosmed along with a request for authorization to release funds for purchase and installation; (e) purchase and installation of controls will be subject to all

customary warranties and the San Diego SEP does not alter any warranty otherwise available for such products or services provided; and (f) the District, in consultation with the parties currently operating and maintaining the vehicles and equipment to be controlled, will select contractors and other entities from whom purchase and installation of controls will be obtained and for whom the District will submit to Cosmed a request for authorization to release escrowed funds. The estimated costs allocated for each Project Venue, not including District oversight costs, currently are as follows: Port of San Diego ($90,000), the City of San Diego ($150,000), and the North County Transit Coaster Service ($107, 000). It is anticipated that the District will have discretion regarding allocation of funding and funding requests for the Project Venues, for purposes of installing controls on nonroad and onroad diesel vehicles and other equipment, and supplying ULSD.

7. Addresses Unless otherwise agreed to by Cosmed and EPA, the following shall be the address of the District:

Chuck Spagnola, Transportation Specialist
San Diego Air Pollution Control District
9150 Chesapeake Drive
San Diego, CA 92123
ph: 858-650-4674
e-mail: "chuck.spagnola@sdcounty.ca.gov"

ATTACHMENT C-4

U.S. v. Cosmed Group, Inc.

DALLAS COUNTY CONVERSION SEP

1. Introduction The Dallas County Conversion SEP ("Dallas County SEP") involves reducing NOx and other harmful air pollutants from gasoline engine exhaust by converting approximately 32 Dallas County School buses from using gasoline fuel to using propane fuel, a clean burning fuel. The vehicles covered by the Dallas County SEP are currently operated and maintained by the Dallas County Schools ("DCS") in providing pupil transportation to schools in Dallas County in the state of Texas.

2. Project Parameters The Dallas County SEP will involve converting approximately 32 buses from gasoline fuel use to propane fuel use. The propane engines DCS will be using must be tested at 1 gram of NOx/brake horsepower per hour (g/bhp-hr). Unless otherwise provided pursuant to Appendix C and this Attachment C-4, Cosmed shall spend a total of $182,000 to implement the Dallas County SEP. The Dallas County SEP shall be completed by no later than one (1) year from entry of the Consent Decree, or at another time mutually agreed upon by Cosmed and EPA, pursuant to Paragraph 70 of the Consent Decree.

3. Location and Technology The Dallas County SEP shall be implemented in Dallas County, TX. In order to provide the greatest long-term benefits under this program, the Dallas County SEP shall give preference for converting vehicles which are operated and maintained within the Dallas County area, rather than vehicles and equipment that may be leased or otherwise moved outside the City of Dallas or Dallas County. The conversion shall be performed on vehicles that are anticipated to remain in regular service for at least 3 years following the conversion. The conversion shall be performed using only demonstrated conversion technologies

and equipment. In no event shall SEP funds be used for research or investigation of new or wholly undemonstrated conversion technologies or applications, nor be used for testing of EPA-verified retrofit technologies and equipment.

4. Implementation Schedule The Dallas County SEP shall be performed on the following schedule:

(a) On or before 60 days after entry of the Consent Decree, Cosmed shall establish an interest-bearing escrow account that meets the requirements of the Consent Decree, Appendix C, and this Attachment C-4. The escrow agreement shall incorporate provisions required by Paragraph 5 below and shall specifically identify Cosmed as the depositor, Dallas County Schools or another entity proposed by Cosmed and agreed upon by EPA as beneficiary with authority to request that escrowed funds be released for activities within the scope of the Dallas County SEP, and a bank or other comparable commercial entity as escrow agent authorized to release funds upon specific authorization from the depositor, according to the conditions set forth in the escrow agreement.

(b) Prior to any authorization provided by Cosmed to the escrow agent to release funds for SEP implementation, Cosmed shall obtain from DCS and submit to EPA, in writing, the following information relative to such proposed authorization: (i) a list of vehicles and equipment to be converted, location(s) at which each is garaged and fueled, the Horsepower (Hp), the annual miles or hours of operation, and the projected number of years remaining in service; (ii) a schedule for conversion of the vehicles; (iii) an estimate of the costs associated with converting the buses under the Dallas County SEP; and (iv) for any request to release

escrowed funds in an amount below that which remains in the escrow at the time of the request, a statement indicating whether additional requests for release of escrowed funds are anticipated for the Dallas County SEP. Prior to providing any authorization to the escrow agent to release funds for SEP implementation, Cosmed shall also review all contracts with vendors involved in implementation, including any and all contracts pertaining to equipment and/or labor for conversions under the Dallas County SEP.

(c) On or before 180 days of entry of the Consent Decree, Cosmed shall exercise best efforts to ensure that the converting of the vehicles has commenced. Cosmed shall exercise best efforts to ensure that the bus conversions are performed as quickly as possible on a schedule that is most protective of the affected populations living near where the vehicles and equipment are used.

(d) Cosmed shall ensure that, on or before 60 days after one (1) year from entry of the Consent Decree, the conversion of all of the vehicles identified in Paragraph 4(b) has been completed, to the extent that such work can be completed for no more than the amount specified in Subparagraph 5, below, and any amounts directed to the Dallas County SEP pursuant to Paragraph 4 of Appendix C.

5. Escrow In addition to the escrow requirements in Appendix C, the following requirements are applicable to the Dallas County SEP: (a) The escrow account established by Cosmed for the Dallas County SEP shall be an interest bearing escrow account with Citizens Bank of Rhode Island ("Bank") in the amount of ONE HUNDRED EIGHTY-TWO THOUSAND DOLLARS ($182,000). The escrow account instructions shall limit and restrict

the use of the escrowed funds to converting DCS gasoline powered school buses to propane fuel use. Cosmed shall communicate to DCS in writing, and the escrow instructions shall reflect, that any payments to DCS from the escrow, up to a total of $182,000, plus any interest earned, are conditioned on DCS's spending the funds on activities specifically contemplated by the Consent Decree, Appendix C, and this Attachment C-4, namely, the following: the conversion of approximately 32 DCS school buses from using gasoline fuel to using propane fuel. The escrow instruction shall also provide that, where there are remaining, unexpended escrow funds originally intended for the Dallas County SEP and no longer needed for the Dallas County SEP, such remainders shall, upon agreement by EPA, be directed to another of the SEPs described in the Consent Decree, Appendix C, and Attachments C-1, C-2, and C-3, in accordance with the terms of the Decree, Appendix C, and the Attachments thereto.

(b) Cosmed shall send a copy of the Consent Decree with all Appendices and Attachments to DCS, within ten (10) days of its entry by this Court, at the addresses listed below. To receive funding authorization, DCS must provide Cosmed with all of the information required by Subparagraph 4(b) of this Attachment. Cosmed shall provide EPA with a copy of such information and, within thirty (30) days of EPA's receipt, EPA shall contact Cosmed if EPA objects to the release of funds to DCS because EPA believes that the information shows the proposed escrow withdrawal is inconsistent with the requirements pertaining to the use of escrowed funds, as set forth in the Consent Decree, Appendix C, and this Attachment C-4. If Cosmed finds the proposed withdrawal consistent with this settlement and receives no objection from EPA within EPA's review period, Cosmed shall instruct the Bank to release the requested

funds to DCS. Each time Cosmed instructs the Bank to release funds to DCS, Cosmed shall notify EPA of the date that Cosmed sent the instructions and the amount of funds to be released. Cosmed shall send its notification to EPA within thirty (30) days of the date it sent the instructions to the Bank.

(c) Cosmed shall specify in the escrow instructions that authorization for the release of funds may only be given by Cosmed after DCS has presented a certification to Cosmed that bears the signature of the Executive Director of DCS and certifies that: (i) funds to be withdrawn will be used as contemplated by the Consent Decree, Appendix C, and this Attachment C-4 and, except for accrued interest, does not exceed the escrowed amount specified above; (ii) all prior withdrawals have been used for authorized purposes; and, (iii) the certification has been served by mail on EPA Regions 1 and 6, and the Bank.

(d) The escrow agreement shall specify that DCS must draw upon all funds in the escrow account, including any accrued interest, on or before one (1) year of entry of the Consent Decree and in accordance with Paragraphs 2 through 4 of Appendix C. The escrow agreement shall provide that any funds remaining in the escrow account, including interest, after that 1 year period shall be directed by the escrow agent, within thirty (30) days, to one of the other SEPs described in the Consent Decree, Appendix C, and Attachments C-1, C-2, and C-3 and specified by Cosmed or, if no other SEP is available for further funding, shall be remitted by the escrow agent, within 30 days, to the U.S. Treasury as a stipulated penalty through the procedures set forth in Section VIII of the Consent Decree and Subparagraph 5(a) of this Attachment C-4.

6. Addresses Unless otherwise agreed to by Cosmed and EPA, the following shall be

the address used for DCS:

Tim Jones, Director of Fleet Maintenance
Dallas County Schools
612 N. Zang Blvd.
Dallas, TX 75208
214-944-4569