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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), commenced this action in 1980 against the Union Corporation and U.C.O.-M.B.A., Inc. (“Metal Bank”) (known collectively as “the corporate Defendants”), and Irvin Schorsch and John Schorsch. The original complaint asserted claims under the Resource Conservation and Recovery Act, as amended, (“RCRA”), 42 U.S.C. §§ 6901, *et seq.*, as well as other environmental statutes, and it sought reimbursement for the United States’ costs of responding to contamination at the Site and injunctive relief for further remedial work to abate an imminent and substantial endangerment to health or the environment consistent with RCRA and the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

B. Pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (“CERCLA”), 42 U.S.C. § 9605, EPA listed the Site on the Superfund National Priorities List (“NPL”) set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 8, 1983. By listing the Site on the NPL, EPA targeted it for remedial action pursuant to the Agency’s administrative authority under CERCLA. The Court subsequently entered a stipulation pursuant to which the Defendants agreed to operate an oil recovery system to remove oil from the subsurface of the Site. The Court placed the case in the suspense docket after the Defendants entered the stipulation.

C. On May 29, 1991, EPA signed an Administrative Order on Consent with ten utility companies that sent transformers to the Site. These companies became the nucleus of the Cottman Avenue PRP Group (the “Utility Group”), which has been actively involved in this litigation. Under the terms of the Administrative Order, the Utility Group agreed to conduct a Remedial Investigation and Feasibility Study of the Site.

D. The Utility Group submitted a Remedial Investigation report in 1994, which documented widespread contamination at the Site, including polychlorinated biphenyls (“PCBs”), polycyclic aromatic hydrocarbons (“PAHs”) and other hazardous substances. The Feasibility Study was completed shortly thereafter.

E. After reviewing the alternatives presented in the Feasibility Study, EPA identified its preferred alternative and issued a Proposed Remedial Action Plan. Comments on the plan were submitted by various interested parties, including the Defendants, the Utility Group, and members of the surrounding community.

F. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the Feasibility Study and of the proposed plan for remedial action in about July, 1995, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

G. EPA reviewed the comments and subsequently selected its preferred remedy in a Record of Decision (“ROD”) issued in 1997.

H. After the ROD was issued, the Utility Group and the Defendants separately proposed to prepare the remedial design, but not the actual remedy. EPA issued a Unilateral Administrative Order (“UAO”) to all these parties to jointly undertake the remedial design and remedial action in June 1998. After weighing the separate proposals submitted by the Defendants and the Utility Group, EPA selected the Utility Group’s proposal.

I. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Pennsylvania of negotiations with potentially responsible parties regarding the remedial design and remedial action for the Site.

J. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the relevant federal natural resource trustees of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship.

K. The Utility Group proceeded with the development of the remedial design in accordance with the UAO by completing a Work Plan and Sampling Plans during 1998 and a Pre-Design Investigation in 1999. Based on the Pre-Design Investigation, the Utility Group proposed certain changes to EPA regarding the remedy selected in the ROD. EPA evaluated the Utility Group’s proposal and subsequently modified the remedy decision by issuing two Explanations of Significant Difference in the Fall of 2000.

L. When the case returned to the active docket in 1998, the United States amended its complaint to add cost recovery claims under CERCLA and to drop its original claims under the statutes other than RCRA.

M. In 2002, the Court conducted a four-week trial addressing two issues: (1) whether the contamination at the Site presents an imminent and substantial endangerment to public health and/or the environment so as to warrant response action, and (2) whether the Defendants were liable for the contamination of the Site under CERCLA and RCRA. On January 21, 2003, the Court issued an opinion published as *United States v. Union Corporation, et al.*, 259 F. Supp.2d 356 (E.D. Pa. 2003), in which the Court found that the contamination at the Site presents an imminent and substantial endangerment to the environment and that it may present an imminent and substantial endangerment to human health. The Court further held that each of the Defendants was liable for the contamination of the Site under CERCLA and RCRA.

N. In December 2002, pursuant to the UAO, the Utility Group submitted a Final Design report (attached as Appendix B). EPA approved the Final Design in January 2003, but the Utility Group declined to implement the Final Design at the Site under the UAO pending the Court’s determination of the appropriate remedy. The United States moved the Court to stay judicial proceedings on the remedy in order to allow cleanup of the Site to proceed under the

UAO, but the Court denied the motion. EPA subsequently refrained from taking further administrative action at the Site in order to avoid proceeding on parallel judicial and administrative tracks.

O. The Corporate Defendants filed a consolidated Chapter 11 bankruptcy action in the United States Bankruptcy Court for the Eastern District of Missouri in May 2003. With the approval of the bankruptcy court, they agreed to a settlement which established, among other things, a substantial funding mechanism for the future remedy at the Site.

P. During the summer of 2003, EPA conducted a sampling program to gather additional information about the concentrations of and uptake of PCBs, dioxins and PAHs at the Site.

Q. The Court scheduled a second trial to begin on November 1, 2004, to address two issues: (1) the appropriate remedy for contamination at the Site, and (2) the amount that the United States is entitled to recover for its past response costs.

R. In early 2004, the Court suggested that the Parties engage in mediation to explore the possibility of settling the case. As a result of several months of negotiations, the EPA and the Utility Group agreed to certain modifications of the Final Design as reflected in the Revised Remedial Plan attached to this Consent Decree as Appendix C.

S. During the mediation negotiations, the United States moved the Court for leave to join the members of the Utility Group as direct defendants. Since the filing of this motion, the Parties have reached agreements resolving all claims in this litigation, and the United States has withdrawn the motion without prejudice.

T. This Consent Decree is one of three Companion Consent Decrees in connection with this litigation that the United States is lodging with the Court.

U. By entering into this Consent Decree, Settling Third-Party Defendants do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, as amended.

V. As set forth in this Consent Decree, the Settling Third-Party Defendants have agreed to implement the Remedial Action for the Site. The Remedial Action will be embodied in the Revised Final Design, as provided below.

W. Based on information presently available, EPA believes the Remedial Action will be properly and promptly implemented by the Settling Third-Party Defendants if conducted in accordance with the requirements of this Consent Decree, including its appendices. Notice of lodging of the Consent Decree will be published in the *Federal Register*, and the United States will accept public comment on the Consent Decree, including the Revised Remedial Plan, for a period of thirty days. The United States will also offer the opportunity for a public hearing in the affected area. If comments received in response to the notice and at the hearing do not disclose

facts or considerations that indicate that the Consent Decree and/or the Revised Remedial Plan is inappropriate, improper or inadequate, the United States will move the Court to enter the Consent Decree.

X. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action and the Work to be performed by the Settling Third-Party Defendants shall constitute a response action taken or ordered by the President.

Y. By entering this Consent Decree, the Court exercises its jurisdiction to select the Revised Remedial Plan, in lieu of any alternatives, as the most appropriate and reasonable remedy to address the imminent and substantial endangerment to the public health and environment presented by the contamination at the Site.

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

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

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 6973, 9606, 9607 and 9613(b), and also has personal jurisdiction over the Settling Third-Party Defendants. Solely for the purposes of this Consent Decree and the underlying pleadings, Settling Third-Party Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Third-Party Defendants shall not challenge the terms of this Consent Decree or any of the other Companion Consent Decrees or this Court's jurisdiction to enter and enforce any of the Companion Consent Decrees.

III. PARTIES BOUND

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

3. Settling Third-Party Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to

each person representing any Settling Third-Party Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Third-Party Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Third-Party Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Third-Party Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

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

“Commonwealth” or “State” shall mean the Commonwealth of Pennsylvania.

“Companion Consent Decrees” shall mean the three consent decrees related to the Site lodged contemporaneously in this matter, consisting of the “Utility Group Consent Decree,” the “Irvin G. Schorsch Jr. Consent Decree” and the “John B. Schorsch Consent Decree.”

“Consent Decree” shall mean this Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

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

“DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

“Duly Authorized Representative” shall mean a person set forth or designated in accordance with the procedures set forth in 40 C.F.R. § 270.11(b).

“Effective date” shall be the effective date of this Consent Decree as provided in Section XXVII of this Consent Decree.

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

“Final Design” shall mean the document submitted by the Utility Group to EPA in December 2002, which is attached as Appendix B.

“Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Third-Party Defendants' performance of further response actions other than those necessary to implement the Remedial Action. Future Oversight Costs shall include costs incurred in reviewing plans, reports, and other documents prepared in connection with the further response action as well as costs incurred in overseeing implementation of the further response actions performed pursuant to ¶¶ 18 and 20 below. Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to Paragraph 17, Paragraph 87, Section IX (Access and Institutional Controls), Section XV (Emergency Response), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 87 of Section XXI.

“Hazardous Substances Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

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

“Interest Earned” shall mean interest earned on amounts in the Metal Bank Superfund Site Disbursement Special Account, which shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the Interest accrues.

“Metal Bank Superfund Site Special Account” shall mean any special account established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Metal Bank Superfund Site Disbursement Special Account” shall mean the special account established within the Hazardous Substance Superfund established pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), for disbursement of funds to Settling Third-Party Defendants in partial reimbursement for performance of Work under this Consent Decree.

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

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree.

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

“Parties” shall mean the United States and the Settling Third-Party Defendants.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth on pages 51-56 of the ROD (attached hereto as Appendix A), and the modifications agreed to in the Revised Remedial Plan (attached hereto as Appendix C).

“Plaintiff” shall mean the United States.

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

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Metal Bank Superfund Site signed on December 31, 1997, by the Regional Administrator, EPA Region III, as modified by the two Explanations of Significant Difference issued in September 2000 and December 2000, and all attachments thereto.

“Remedial Action Work Plan” shall mean the document developed pursuant to Paragraph 11(b) of this Consent Decree and approved by EPA, and any amendments thereto.

“Remedial Action” shall mean those activities to be undertaken by the Settling Third-Party Defendants to implement the Revised Final Design, in accordance with the Remedial Action Work Plan and other plans approved by EPA, pursuant to this Consent Decree. “Remedial Action” does not include Operation and Maintenance that takes place after certification of completion of the Remedial Action pursuant to Paragraph 50, nor does it include remedial proposals, including the individual components of any such proposals, that have been advanced by the United States, the Settling Third-Party Defendants, or any other party, that are inconsistent with or otherwise different from the Revised Final Design. Nevertheless, EPA is

not precluded from (1) proposing modifications to the Remedial Action under Paragraph 14, (2) requiring additional studies or investigations under Paragraph 17, (3) requiring appropriate emergency response action under Paragraphs 52 and 53, and (4) exercising its reservations of rights under Paragraphs 18, 20 and 86.

“Revised Final Design” shall mean the final plans and specifications, approved by EPA, for implementing the Remedial Action. The Revised Final Design shall consist of the Final Design (Appendix B) as modified by the Revised Remedial Plan (Appendix C).

“Revised Remedial Plan” shall mean the document attached as Appendix C which memorializes the agreements between the United States and the Settling Third-Party Defendants concerning the Remedial Action to be implemented at the Site

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

“Settling Third-Party Defendants” shall mean Baltimore Gas and Electric Company, Consolidated Edison Company of New York, Inc., Jersey Central Power & Light Company, Long Island Lighting Company d/b/a LIPA, Metropolitan Edison Company, Orange and Rockland Utilities, PECO Energy Company, Potomac Electric Power Company, PP&L Electric Utilities Corporation, Public Service Electric and Gas Company, and Virginia Electric and Power Company.

“Site” shall mean the Metal Bank Cottman Avenue Superfund Site, located at 7301 Milnor Street, at the intersection of Cottman Avenue and fronting on the Delaware River in the City of Philadelphia, Pennsylvania, and generally shown on the map included in Appendix A.

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

“United States” shall mean the United States of America, including its departments, agencies and instrumentalities.

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

“Work” shall mean all activities Settling Third-Party Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of the Remedial Action at the Site by the Settling Third-Party Defendants, and to resolve the claims of Plaintiff against Settling Third-Party Defendants as provided in this Consent Decree.

6. Commitments by Settling Third-Party Defendants

a. Settling Third-Party Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the Revised Final Design, and all other work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Third-Party Defendants and approved by EPA pursuant to this Consent Decree. Funds from the OSI Trust will be made available to Settling Third-Party Defendants for financing implementation of the Remedial Action.

b. The obligations of Settling Third-Party Defendants to finance and perform the Work and to pay any Future Oversight Costs owed to the United States are joint and several. In the event of the insolvency or other failure of any one or more Settling Third-Party Defendants to implement the requirements of this Consent Decree, the remaining Settling Third-Party Defendants shall complete all such requirements.

c. In the event that any of the Settling Third-Party Defendants files for bankruptcy or is placed involuntarily in bankruptcy proceedings, such Settling Third-Party Defendant shall notify the United States within three (3) days of such filing.

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

8. Permits

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

b. The Settling Third-Party Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

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

9. [Reserved]

VI. PERFORMANCE OF THE WORK BY SETTLING THIRD-PARTY DEFENDANTS

10. Selection of Contractors.

a. Supervising Contractor.

i. All aspects of the Work to be performed by Settling Third-Party Defendants pursuant to Sections VI (Performance of the Work by Settling Third-Party Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to acceptance or disapproval by EPA. Within thirty (30) days after the lodging of this Consent Decree, Settling Third-Party Defendants shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Third-Party Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP shall be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or acceptance of the selection of such Supervising Contractor. If at any time thereafter, Settling Third-Party Defendants propose to change a Supervising

Contractor, Settling Third-Party Defendants shall give such notice to EPA and must obtain a notice of acceptance of such change from EPA, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

ii. If EPA disapproves the selection of a proposed Supervising Contractor, EPA will notify Settling Third-Party Defendants in writing. Settling Third-Party Defendants shall submit to EPA a list of at least three (3) contractors, including the qualifications of each contractor, that would be acceptable to them within thirty (30) days of receipt of EPA's notice. EPA will provide written notice of the names of any contractor(s) whose selection it would accept. Settling Third-Party Defendants may select any contractor from that list and shall notify EPA of the name of the contractor selected within twenty-one (21) days of EPA's written notice.

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

b. Other Contractors and Subcontractors.

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

11. Remedial Action.

a. Within thirty (30) days after the Effective Date, Settling Third-Party Defendants shall submit to EPA for approval or disapproval a Revised Final Design. The Revised Final Design shall consist of the Final Design (Appendix B) as modified by the Revised Remedial Plan (Appendix C). Upon approval, the Revised Final Design shall be incorporated into and become enforceable under this Consent Decree.

b. Within thirty (30) days after EPA's approval of the Revised Final Design,

Settling Third-Party Defendants shall submit to EPA for approval a work plan for the performance of the Remedial Action at the Site (“Remedial Action Work Plan”). The Remedial Action Work Plan shall be developed consistent with the Revised Final Design and shall provide for construction and implementation of the Remedial Action, as set forth in the Revised Final Design. Upon its approval by EPA, the Remedial Action Work Plan shall be enforceable under this Consent Decree. At the same time they submit the Remedial Action Work Plan, Settling Third-Party Defendants shall submit to EPA a Health and Safety Plan (“HASp”) for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

c. The Remedial Action Work Plan shall include the following:

- i. schedule for completion of the Remedial Action;
- ii. schedule for developing and submitting other required Remedial Action plans;
- iii. methodology for implementation of the Construction Quality Assurance Plan (“CQAP”) which shall detail the approach to quality assurance during construction activities at the Site and shall specify a quality assurance official (“QA Official”), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project;
- iv. methods for satisfying permitting requirements;
- v. methodology for implementation of the Operation and Maintenance Plan;
- vi. methodology for implementation of the Remedial Action Contingency Plan;
- vii. tentative formulation of the Remedial Action team (including, but not limited to, the Supervising Contractor);
- viii. construction quality control plan (by constructor); and
- ix. methodology for decontamination of equipment and the disposal of contaminated material.

12. Upon approval of the Remedial Action Work Plan by EPA, Settling Third-Party Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Third-Party Defendants shall submit to EPA all plans, submittals, or other deliverables

required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Third-Party Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

13. The Settling Third-Party Defendants shall continue to implement the Remedial Action and O & M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the Work.

a. If EPA determines that modification of the Work is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the Remedial Action, EPA may (1) propose that such modification be incorporated into the Remedial Action Work Plan, Operation and Maintenance Plan, and/or any other plan relating to such Work, and/or (2) propose that Settling Third-Party Defendants submit a plan for EPA approval which incorporates such modification to the Work and implement such approved plan. Provided, however, that a modification may be proposed pursuant to this Paragraph only to the extent that it is consistent with the scope of the Remedial Action.

b. If Settling Third-Party Defendants object to any modification proposed by EPA pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 68 (record review). The Remedial Action Work Plan, Operation and Maintenance Plan, and/or related work plans shall be modified in accordance with final resolution of the dispute. If Settling Third-Party Defendants do not invoke the dispute resolution procedures within the time frames set forth in Section XIX (Dispute Resolution), Settling Third-Party Defendants shall perform any Work modifications proposed by EPA under this Paragraph.

c. Submission of Plans. Prior to performing any Work modifications proposed by EPA under this Paragraph, Settling Third-Party Defendants shall submit modifications to the Remedial Action Work Plan, Operation and Maintenance Plan, and/or work plans developed in accordance with this Paragraph to EPA for approval in accordance with the procedures set forth in Section VI (Performance of Work by Settling Third-Party Defendants) and Section XI (EPA Approval of Plans and Other Submissions).

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

15. The Parties acknowledge and agree that nothing in this Consent Decree or the Remedial Action Work Plan constitutes a warranty or representation of any kind by any Party that compliance with the work requirements set forth in the Work Plan will achieve the Performance Standards.

16. Settling Third-Party Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

a. The Settling Third-Party Defendants shall include in the written notification the following information, where available:

- i. the name and location of the facility to which the Waste Material is to be shipped;
- ii. the type and quantity of the Waste Material to be shipped;
- iii. the expected schedule for the shipment of the Waste Material; and
- iv. the method of transportation.

The Settling Third-Party Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Third-Party Defendants following the award of the contract for Remedial Action construction. The Settling Third-Party Defendants shall provide the information required by Paragraph 16a as soon as practicable after the award of the contract but in no case less than seven (7) days before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Settling Third-Party Defendants shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA and 40 C.F.R. § 300.440. Settling Third-Party Defendants shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulations cited in the preceding sentence.

VII. REMEDY REVIEW

17. Periodic Review. Settling Third-Party Defendants shall conduct any additional studies and investigations determined by EPA to be necessary or reasonable and appropriate (in light of applicable law, guidance, standards or policies) in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment, at least every five (5) years as required by Section 121(c) of CERCLA and any applicable regulations. Prior to

making a determination that such studies are necessary or appropriate, EPA will discuss with Settling Third-Party Defendants the need for, and scope of, such studies and investigations. This Paragraph applies until (a) EPA determines such reviews are no longer necessary, reasonable and appropriate, or required by law, or (b) applicable law, including a ruling or order of the Court, no longer authorizes such reviews.

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

19. Opportunity To Comment. Settling Third-Party Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period. This opportunity to comment does not limit any other rights the Settling Third-Party Defendants may have.

20. Settling Third-Party Defendants' Obligation to Perform Further Response Actions Other than those Reasonable and Necessary to Implement the Remedial Action. If EPA selects further response actions for the Site, the Settling Third-Party Defendants shall be obligated to undertake such further response actions, either by themselves or with the contributions of work or financial support of other parties, subject to Settling Third-Party Defendants' right to challenge, in accordance with Section XIX (Dispute Resolution), EPA's determination that the Remedial Action is not protective of human health and the environment or EPA's selection of further response actions under Paragraph 18. This provision does not diminish, waive, or release the obligations of any other parties; either or both Plaintiff and the Settling Third-Party Defendants shall be permitted, but not required, to pursue any and all claims or actions against other parties who may have obligations at the Site. However, no such obligation by another party nor claim or action against them shall excuse or postpone the Settling Third-Party Defendants' obligation to timely undertake and perform the response actions.

21. Submissions of Plans. Prior to performing any further response actions that may be requested by EPA pursuant to Paragraphs 18 and 20, Settling Third-Party Defendants shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Third-Party Defendants) and Section XI (EPA Approval of Plans and Other Submissions). Settling Third-Party Defendants shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. While conducting all sample collection and analysis activities required by this Consent Decree, the Settling Third-Party Defendants shall implement quality assurance, quality control, and chain of custody procedures in accordance with “EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5)”(EPA 240 B-01 003, March 2001); “EPA NEIC Policies and Procedures Manual,” (May 1986) (EPA 330/978-001-R); National Functional Guidelines for Inorganic Data Review (EPA 540/R-94/013) and Modifications to the National Functional Guidelines for Inorganic Data Review (EPA Region III: April 1993); National Functional Guidelines for Organic Data Review (EPA 540/R-94/012) and Modifications to the National Functional Guidelines for Organic Data Review (EPA Region III: September 1994); “Region III Innovative Approaches to Data Validation,” (EPA Region III: September 1994); “Data Quality Objectives Process for Superfund,” (EPA 540/R-93/071: September 1994); and subsequent amendments to such guidelines upon notification by EPA to Settling Third-Party Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Third-Party Defendants shall submit to EPA for approval a Quality Assurance Project Plan (“QAPP”) for the Work that is consistent with the NCP and the guidance documents cited above. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Third-Party Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Third-Party Defendants in implementing this Consent Decree. In addition, Settling Third-Party Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Third-Party Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Settling Third-Party Defendants shall submit to EPA the selected laboratory's(ies) Quality Assurance Program Plan(s) and their qualifications, which shall include, at a minimum, previous certifications, Performance Evaluation (PE) results, equipment lists and personnel resumes. Settling Third-Party Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA. At the request of EPA, Settling Third-Party Defendants shall conduct one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the QAPP. Auditors shall conduct lab audits during the time the laboratory is analyzing samples collected pursuant to this Consent Decree. The lab audit shall be conducted according to procedures available from the QA Branch. Audit reports shall be submitted to the EPA Project Coordinator within fifteen (15) days of completion of the audit. The Settling Third-Party Defendants shall report serious deficiencies, including all those which adversely impact data quality, reliability or accuracy, and take action to correct such deficiencies within twenty-four (24) hours of the time the Settling Third-Party Defendants knew or should have known of the deficiency.

23. Upon request, the Settling Third-Party Defendants shall allow split or duplicate samples

to be taken by EPA or its authorized representatives. Settling Third-Party Defendants shall notify EPA not less than ten (10) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Settling Third-Party Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Third-Party Defendants' implementation of the Work.

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

25. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statute or regulation.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. **[Reserved]**

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Third-Party Defendants, Settling Third-Party Defendants shall cooperate with the United States in its efforts to secure access from the Union Trust and Settling Third-Party Defendants shall use best efforts to secure from other persons:

a. an agreement to provide access thereto for Settling Third-Party Defendants, as well as for the United States on behalf of EPA, the State and their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States or the Commonwealth;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

vii. Implementing the Work pursuant to the conditions set forth in Paragraph 87 of this Consent Decree (Work Takeover);

viii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Third-Party Defendants or their agents, consistent with Section XXIV;

ix. Assessing Settling Third-Party Defendants' compliance with this Consent Decree; and

x. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. an agreement, enforceable by the Settling Third-Party Defendants and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree; and

c. the execution and recordation in the Department of Records, City of Philadelphia, Commonwealth of Pennsylvania, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 27(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 27(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the Commonwealth and its representatives, (iii) Settling Third-Party Defendants and their representatives, and/or (iv) other appropriate grantees. If EPA so requests, Settling Third-Party Defendants shall submit to EPA for review and approval with respect to such property within the time frame specified by EPA:

i. A draft easement, in substantially the form attached hereto as Appendix E, that is enforceable under the laws of the Commonwealth of Pennsylvania; and

ii. a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Third-Party Defendants are unable to obtain release or subordination of such

prior liens or encumbrances).

Within fifteen (15) days of EPA's approval of the easement and the title evidence, such Settling Third-Party Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Department of Records, City of Philadelphia. Within thirty (30) days of recording the easement, such Settling Third-Party Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

28. For purposes of Paragraph 27 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. If (a) any access or land/water use restriction agreements required by Paragraphs 27(a) or 27(b) of this Consent Decree are not obtained within forty-five (45) days of the date of entry of this Consent Decree, (b) any access easements or restrictive easements required by Paragraph 27(c) of this Consent Decree are not submitted to EPA in draft form within the time frame specified by EPA, or (c) Settling Third-Party Defendants are unable to obtain an agreement pursuant to Paragraph 27.c.(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this Consent Decree within forty-five (45) days of the date of entry of this Consent Decree, Settling Third-Party Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Third-Party Defendants have taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Third-Party Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Third-Party Defendants shall reimburse the United States for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation. Such reimbursements shall be made in the same manner as provided in ¶ 77 for payment of stipulated penalties.

29. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the Remedial Action, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Third-Party Defendants shall cooperate with EPA's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States retains all of

its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Third-Party Defendants shall submit to EPA three (3) copies of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Third-Party Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts, and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Third-Party Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Settling Third-Party Defendants shall submit these progress reports to EPA by the tenth (10th) day of every month following the lodging of this Consent Decree until EPA notifies the Settling Third-Party Defendants pursuant to Paragraph 51.b of Section XIV (Certification of Completion). If requested by EPA, Settling Third-Party Defendants shall also provide briefings for EPA to discuss the progress of the Work.

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

33. Upon the occurrence of any event during performance of the Work that Settling Third-Party Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Third-Party Defendants shall within twenty-four (24) hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the EPA Region III Hotline at (215) 814-3255.

These reporting requirements are in addition to the reporting required by CERCLA § 103 or EPCRA § 304.

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

35. Settling Third-Party Defendants shall submit three (3) copies of all plans, reports, and data required by the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Upon request by EPA, Settling Third-Party Defendants shall submit in electronic form all portions of any report or other deliverable Settling Third-Party Defendants are required to submit pursuant to the provisions of this Consent Decree.

36. All reports and other documents submitted by Settling Third-Party Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Third-Party Defendants' compliance with the terms of this Consent Decree shall be signed by a Duly Authorized Representative of the Settling Third-Party Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Third-Party Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Third-Party Defendants at least one notice of deficiency and an opportunity to cure within fourteen (14) days, or such other time as specified by EPA in such notice, except where to do so would cause serious disruption to the Work, or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate to EPA a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Settling Third-Party Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

39. a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Third-Party Defendants shall, within fourteen (14) days, or such other time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the fourteen (14)-day period, or otherwise specified period, but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Third-Party Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Third-Party Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Third-Party Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Third-Party Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Third-Party Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Third-Party Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section, or if EPA permits the resubmission of another plan, report, or item. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

42. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

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

EPA Project Coordinator:

Linda Dietz (3HS21)
U.S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, PA 19103
Telephone: (215) 814-3195
Fax: (215) 814-3002

EPA Alternate Project Coordinator:

Anthony Dappolone (3HS21)
U.S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, PA 19103
Telephone: (215) 814-3188
Fax: (215) 814-3002

Within twenty (20) days after this Consent Decree is lodged, Settling Third-Party Defendants will notify EPA in writing of the name, address and telephone number of their designated Project Coordinator and Alternate Project Coordinator. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Third-Party Defendants' Project Coordinator and Alternate Project Coordinator shall be subject to acceptance or disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Third-Party Defendants' Project Coordinator and Alternate Project Coordinator shall not be an attorney for any of the Settling Third-Party Defendants in this matter. The Settling Third-Party Defendants' Project Coordinator and Alternate Project Coordinator may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator and Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

45. EPA's Project Coordinator and the Settling Third-Party Defendants' Project Coordinator will meet, at a minimum, on a monthly basis.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

46. Within thirty (30) days of entry of this Consent Decree, Settling Third-Party Defendants shall establish and maintain financial security in the amount of \$18,000,000 in one or more of the following forms:

- a. A surety bond guaranteeing performance of the Work;
- b. One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- c. A trust fund;
- d. A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Third-Party Defendants; or
- e. A demonstration that one or more of the Settling Third-Party Defendants satisfy the requirements of 40 C.F.R. § 264.143(f).

Such financial security shall be maintained by the Settling Third-Party Defendants until EPA agrees that the Work has been completed and issues a Certification of Completion in accordance with Paragraph 51b.

47. If the Settling Third-Party Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 46(d) of this Consent Decree, Settling Third-Party Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Third-Party Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 46(d) or (e), and if requested by EPA, then one or more of the Settling Third-Party Defendants shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, within ten (10) days after the anniversary of the Effective Date. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Third-Party Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval another form of financial assurance acceptable to EPA. Settling Third-Party Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

48. If Settling Third-Party Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 46 above after entry of this Consent Decree, Settling Third-Party Defendants may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the

financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Third-Party Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Third-Party Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

49. Settling Third-Party Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Third-Party Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

50. Completion of the Remedial Action

a. Within ninety (90) days after Settling Third-Party Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Third-Party Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Third-Party Defendants and EPA. If, after the pre-certification inspection, the Settling Third-Party Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the Commonwealth, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Third-Party Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Third-Party Defendants or the Settling Third-Party Defendants' Project Coordinator:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Third-Party Defendants in writing of the activities that must be undertaken by Settling Third-Party Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may

only require Settling Third-Party Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the Remedial Action. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Third-Party Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Third-Party Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Third-Party Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenant not to sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Third-Party Defendants' obligations under this Consent Decree.

51. Completion of the Work

a. Within ninety (90) days after Settling Third-Party Defendants conclude that all phases of the Work (including O & M), have been fully performed, Settling Third-Party Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Third-Party Defendants and EPA and the Commonwealth. If, after the pre-certification inspection, the Settling Third-Party Defendants still believe that the Work has been fully performed, Settling Third-Party Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Third-Party Defendants or the Settling Third-Party Defendants' Project Coordinator:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

If, after review of the written report, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Third-Party Defendants in writing of the activities that must be undertaken by Settling Third-Party Defendants pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Settling Third-Party Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the scope of the Remedial Action. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Third-Party Defendants to submit a schedule to EPA for

approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Third-Party Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Third-Party Defendants that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Third-Party Defendants in writing.

XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Third-Party Defendants shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Third-Party Defendants shall notify the EPA Region III Hotline at (215) 814-3255. Settling Third-Party Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that Settling Third-Party Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Third-Party Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP.

53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to (a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenant Not to Sue by Plaintiffs).

XVI. PAYMENTS FOR RESPONSE COSTS

54. **[Reserved]**

55. Payments for Future Oversight Costs.

a. EPA retains the right to seek recovery from Settling Third-Party Defendants for

all the government's Future Oversight Costs not inconsistent with the NCP for any further response actions proposed by EPA under Paragraph 20 (Settling Third-Party Defendants' Obligation to Perform Further Response Actions Other than those Reasonable and Necessary to Implement the Remedial Action) and subsequently performed by Settling Third-Party Defendants.

56. [Reserved.]

57. [Reserved.]

XVII. INDEMNIFICATION AND INSURANCE

58. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Third-Party Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Third-Party Defendants shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Third-Party Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Third-Party Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Third-Party Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Third-Party Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Third-Party Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Third-Party Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Third-Party Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 58a, and shall consult with Settling Third-Party Defendants prior to settling such claim.

59. Settling Third-Party Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Third-Party Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Third-Party Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract,

agreement, or arrangement between any one or more of Settling Third-Party Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

60. No later than fifteen (15) days before commencing any on-site Work, Settling Third-Party Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 50b of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of \$500,000.00 combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Third-Party Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Third-Party Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Third-Party Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Third-Party Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date of this Consent Decree. If Settling Third-Party Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Third-Party Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Settling Third-Party Defendants may satisfy the provisions of this Paragraph 60 if they submit to EPA for approval one of the financial assurance mechanisms of Section XIII (Assurance of Ability to Complete Work) in at least the amounts stated in this Paragraph 60 demonstrating that Settling Third-Party Defendants are able to pay any claims arising out of Settling Third-Party Defendants' performance of their obligations under this Consent Decree. Such financial assurance mechanism shall meet all of the requirements of Section XIII (Assurance of Ability to Complete Work). If Settling Third-Party Defendants seek to utilize the mechanisms set forth in Section XIII (Assurance of Ability to Complete Work) to satisfy the provisions of this Paragraph 60, they must demonstrate an ability to pay the amounts required under this Paragraph, above and beyond that required by the obligations of Section XIII (Assurance of Ability to Complete Work).

XVIII. FORCE MAJEURE

61. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Third-Party Defendants, of any entity controlled by Settling Third-Party Defendants, or of Settling Third-Party Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Third-Party Defendants' best efforts to fulfill the obligation. The requirement that the Settling Third-Party Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any

potential force majeure event (a) as it is occurring, and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work, a failure to attain the Performance Standards, or increased costs.

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

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

64. If the Settling Third-Party Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Third-Party Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the

extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Third-Party Defendants complied with the requirements of Paragraphs 61 and 62, above. If Settling Third-Party Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Third-Party Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

65. 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, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Third-Party Defendants that have not been disputed in accordance with this Section.

66. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed ten (10) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

67. a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within ten (10) days after the conclusion of the informal negotiation period, Settling Third-Party Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Third-Party Defendants. The Statement of Position shall specify the Settling Third-Party Defendants' position as to whether formal dispute resolution should proceed under Paragraph 68 or Paragraph 69.

b. Within fourteen (14) days after receipt of Settling Third-Party Defendants' Statement of Position, EPA will serve on Settling Third-Party Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 68 or 69. Within seven (7) days after receipt of EPA's Statement of Position, Settling Third-Party Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Third-Party Defendants as to whether dispute resolution should proceed under Paragraph 68 or 69, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Third-Party Defendants ultimately appeal to the Court to resolve the

dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 68 and 69.

68. Formal dispute resolution accorded review on the administrative record under applicable principles of administrative law.

a. Formal dispute resolution of the following types of disputes shall be conducted pursuant to the procedures set forth in this Paragraph: (1) the selection, adequacy or implementation of the Remedial Action; (2) modification of the Remedial Action pursuant to Paragraph 14; (3) additional studies and investigations requested by EPA under Paragraph 17; (4) emergency response actions under Paragraphs 52 and 53; and (5) all other disputes that are accorded review on the administrative record under applicable principles of administrative law.

b. For purposes of this Paragraph, the adequacy or implementation of the Remedial Action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of the Remedial Action pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Third-Party Defendants regarding the validity of the Remedial Action.

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

d. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 68c. This decision shall be binding upon the Settling Third-Party Defendants, subject only to the right to seek judicial review pursuant to the provisions of this Paragraph 68.

e. Any administrative decision made by EPA pursuant to Paragraph 68b shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Third-Party Defendants with the Court and served on all Parties within ten (10) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Third-Party Defendants' motion.

f. In proceedings on any dispute governed by this Paragraph, Settling Third-Party Defendants shall have the burden of demonstrating that the decision of the Director of the Hazardous Site Cleanup Division, EPA Region III, is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 68c and subject to applicable principles of administrative law; provided however, that in the event of an emergency action for which EPA has not prepared an

administrative record, the Parties shall have an opportunity to present appropriate evidence.

69. Formal dispute resolution for disputes other than those covered by Paragraph 68. Formal dispute resolution for disputes other than those covered by Paragraph 68 shall be governed by this Paragraph.

a. Following receipt of Settling Third-Party Defendants' Statement of Position submitted pursuant to Paragraph 67, the Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final decision resolving the dispute. The Director's decision shall be binding on the Settling Third-Party Defendants unless, within ten (10) days of receipt of the decision, the Settling Third-Party Defendants file with the Court and serve on the Parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Third-Party Defendants' motion.

b. Notwithstanding Paragraph X of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

70. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Third-Party Defendants under this Consent Decree not directly in dispute, unless EPA agrees or the Court decides otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 79. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Third-Party Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

71. Settling Third-Party Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Third-Party Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

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

| <i>Penalty Per Violation Per Day</i> | <i>Period of Noncompliance</i> |
|--------------------------------------|---|
| \$ 2,000.00 | 1 st through 14 th day |
| \$4,000.00 | 15 th through 30 th day |
| \$6,000.00 | 31 st day and beyond |

b. Failure to comply with all the requirements of the following provisions:

(1) paragraphs 10 and 11 (identifying a qualified Supervising Contractor and other contractors and subcontractors to EPA);

(2) paragraphs 43 and 45 (identifying a qualified Project Coordinator to EPA);

(3) paragraphs 11 and 12 (submitting a Revised Final Design, Remedial Action Work Plan, Health and Safety Plan, Operations and Maintenance Plan to EPA);

(4) paragraph 13 (pursuing work at the site);

(5) paragraph 14b (performing work not disputed);

(6) paragraph 14c (submitting modifications to plans to EPA);

(7) paragraph 16 (giving EPA notice of waste shipments);

(8) paragraph 17 (conducting additional studies and investigations requested by EPA);

(9) paragraph 21 (submission of plans to EPA);

(10) Section VIII (paragraphs 22, 23, and 24) (providing for quality assurance, sampling and data analysis); and

(11) paragraph 52 (emergency actions).

c. Notwithstanding the foregoing, if there has been substantial, but not perfect, compliance with the provisions of the Sections described in subpart 72b above, such as submitting required notices one or two days late or submitting at least one, but less than all of the required copies of materials, to EPA, which failure does not materially impair or impede the remedial work provided for under this Consent Decree, then the Settling Third-Party Defendants shall reimburse EPA for any additional costs incurred as a result of the violation and the minor violation will be subject to the stipulated penalties provided in paragraph 73 below.

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

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

b. All requirements of this Consent Decree that are not identified in Paragraph 72b and those that are identified in paragraph 72c of this Consent Decree.

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 of Section XXI (Covenant not to sue by Plaintiff), Settling Third-Party Defendants shall be liable for a stipulated penalty in the amount of \$600,000.

75. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Third-Party Defendants of any deficiency; (2) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 68.b. or 69.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Third-Party Defendants' reply to EPA's Statement of Position is received until the date that the Director of the Hazardous Site Cleanup Division, EPA Region III, issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

77. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Settling Third-Party Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Third-Party Defendants invoke the Dispute Resolution

procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID # 0305, the DOJ Case Number 90-11-A-1183A and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

78. The payment of penalties shall not alter in any way Settling Third-Party Defendants' obligation to complete the performance of the Work required under this Consent Decree.

79. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute resolution period, 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 this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

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

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

80. a. If Settling Third-Party Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Third-Party Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 77.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Third-Party Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that for any particular violation of this Consent Decree,

the United States shall be limited to either demanding stipulated penalties pursuant to this Section XX of the Consent Decree or pursuing civil penalties pursuant to Section 122(l) of CERCLA, except in the case of a willful violation of the Consent Decree.

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

XXI. COVENANT NOT TO SUE BY PLAINTIFF

82. Except as specifically provided in Paragraphs 20 and 86, and in consideration of the actions that will be performed and the payments that will be made by the Settling Third-Party Defendants under the terms of the Consent Decree, the United States covenants not to sue or to take administrative action against Settling Third-Party Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future liability, this covenant not to sue shall take effect upon entry of the Consent Decree. With respect to future liability, this covenant not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA pursuant to Paragraph 50b of Section XIV (Certification of Completion). This covenant not to sue is conditioned upon the satisfactory performance by Settling Third-Party Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to the Settling Third-Party Defendants and does not extend to any other person.

83. **[Reserved]**

84. **[Reserved]**

85. **[Reserved]**

86. General reservations of rights. The covenant not to sue set forth above does not pertain to any matters other than those expressly specified in Paragraph 82. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Third-Party Defendants with respect to all matters not expressly included within Plaintiff's covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Third-Party Defendants with respect to:

a. claims based on a failure by Settling Third-Party Defendants to meet a requirement of this Consent Decree;

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

c. liability based upon the Settling Third-Party Defendants' ownership or operation of

the Site, or upon the Settling Third-Party Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Third-Party Defendants;

d. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

e. criminal liability;

f. liability for violations of federal or state law which occur during or after implementation of the Remedial Action; and

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the Work);

h. liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs;

i. liability of the Settling Third-Party Defendants to (a) perform further response actions for the Site other than those reasonable and necessary to implement the Remedial Action as provided in Paragraph 20, or (b) reimburse the United States for the costs of such further response actions, including Future Oversight Costs.

87. Work Takeover. In the event EPA determines that Settling Third-Party Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Settling Third-Party Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 68, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph.

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

XXII. COVENANTS BY SETTLING THIRD-PARTY DEFENDANTS

89. Covenant Not to Sue. Subject to the reservations in Paragraph 90, Settling Third-Party Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employers with respect to the Site, past response actions, and Future Oversight Costs as defined herein or this Consent Decree, including, but not

limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112 or 113 of CERCLA, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612 or 9613, or any other provision of law;

b. any claims against the United States pursuant to RCRA or Sections 107 or 113 of CERCLA related to the Site;

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

d. any direct or indirect claim for disbursement from the Metal Bank Superfund Site Special Account or the Metal Bank Superfund Site Disbursement Special Account established pursuant to the three related Consent Decrees to effectuate the settlement in this matter, except as provided in Section XXXVII.

Except as provided in Paragraph 92(a) (Waiver of Claims Against De Micromis Parties), Paragraph 92(b) (Waiver of Claims Against De Minimis Parties), and Paragraph 97 (Waiver of Defenses), this covenant not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 86, subpart b, c, d, g, h, or i, but only to the extent that Settling Third-Party Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

90. The Settling Third-Party Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Third-Party Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

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

§ 300.700(d).

92. Waiver of Claims

a. Waiver of Claims Against De Micromis Parties. Settling Third-Party Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Third-Party Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site if the materials contributed by such person to the Site containing hazardous substances did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Third-Party Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Third-Party Defendant.

b. Waiver of Claims Against De Minimis Parties. Settling Third-Party Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person that has entered into a final CERCLA § 122(g) *de minimis* settlement with EPA with respect to the Site as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Third-Party Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Third-Party Defendants.

XXIII. EFFECT OF SETTLEMENT / CONTRIBUTION PROTECTION

93. Except as provided in Paragraph 92(a) (Waiver of Claims Against De Micromis Parties) and Paragraph 92(b) (Waiver of Claims Against De Minimis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraph 92(a) (Waiver of Claims Against De Micromis Parties) and Paragraph 92(b) (Waiver of Claims Against De Minimis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

94. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Third-Party Defendants are entitled, as of the Effective Date, to protection from

contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. "Matters addressed" shall include all costs incurred and to be incurred at the Site and all response actions taken or to be taken at the Site, by the United States or any other person.

95. The Settling Third-Party Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

96. The Settling Third-Party Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within ten (10) days of service of the complaint on them. In addition, Settling Third-Party Defendants shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

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

XXIV. ACCESS TO INFORMATION

98. Settling Third-Party Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Third-Party Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

99. a. Settling Third-Party Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Third-Party Defendants that the documents or

information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Third-Party Defendants.

b. The Settling Third-Party Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Third-Party Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with 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 contents of the document, record, or information; and (6) the privilege asserted by Settling Third-Party Defendants. 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.

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

XXV. RETENTION OF RECORDS

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

102. After the conclusion of this document retention period, Settling Third-Party Defendants shall notify the United States at least ninety (90) days prior to the destruction of any such records and, upon request by the United States, Settling Third-Party Defendants shall deliver any such records to EPA. If the United States has not responded to Settling Third-Party

Defendants' notice prior to the time Settling Third-Party Defendants intend to destroy the records, Settling Third-Party Defendants shall deliver all such records to EPA no earlier than ten (10) days after providing an additional written notice that such records will be delivered, unless EPA provides otherwise after receiving such notice. The Settling Third-Party Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Third-Party Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the record; (2) the date of the record; (3) the name and title of the author of the record; (4) the name and title of each addressee and recipient; (5) a description of the subject of the record; and (6) the privilege asserted by Settling Third-Party Defendants. However, no records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

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

XXVI. NOTICES AND SUBMISSIONS

104. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Third-Party Defendants, respectively.

As to the United States:

U.S. Department of Justice

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ # 90-11-2-1183A

U.S. Environmental Protection Agency

John J. Monsees (3RC42)
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Linda Dietz (3HS21)
Remedial Project Manager
U.S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, PA 19103-2029

As to the Settling Third-Party Defendants:

Jeffrey N. Martin
Hunton & Williams, LLP
1900 K Street, NW
Suite 1200
Washington DC 20006

Dan J. Jordanger
Hunton & Williams, LLP
Riverfront Plaza, East Tower
951 East Byrd St.
Richmond, VA 23219

XXVII. EFFECTIVE DATE

105. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

106. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Plaintiff and the Settling Third-Party Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for (1) construction or modification of this Consent Decree; (2) effectuation or enforcement of the terms of the Consent Decree; (3) resolution of disputes in accordance with Section XIX (Dispute Resolution); (4) EPA's determination that the Remedial Action is not protective of human health and the environment; or (5) EPA's selection of further response actions under Paragraph 18. Notwithstanding any other provision of this Consent Decree, disputes relating to EPA's determination that the Remedial Action is not protective of human health and the environment or EPA's selection of further response actions under Paragraphs 18 and 20 of this Consent Decree shall be resolved by the Court under applicable principles of law and the dispute resolution provisions in Section XIX.

XXIX. APPENDICES

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

"Appendix A" – Record of Decision for the Site.

"Appendix B" – Final Design Report.

"Appendix C" – Revised Remedial Plan.

"Appendix D" – List of Settling Defendants.

"Appendix E" – Draft easement.

"Appendix F" – List of financial documents submitted by settling defendant John B. Schorsch in connection with the John B. Schorsch Consent Decree.

"Appendix G" – Settlement Agreement Respecting Environmental Objections to Debtors' Third Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code, *In the Matter of Union Financial Services Group, Inc., et al.* (United States Bankruptcy Court for the Eastern District of Missouri, Case Number 03-45870-399).

"Appendix H" – Agreement with the City of Philadelphia.

XXX. COMMUNITY RELATIONS

108. Settling Third-Party Defendants shall propose to EPA their participation in any community relations plan that is developed by EPA. EPA will determine the appropriate role for the Settling Third-Party Defendants under the Plan. Settling Third-Party Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Third-Party Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

109. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of the EPA Project Coordinator and the Settling Third-Party Defendants. All such modifications shall be made in writing.

110. Except as otherwise provided in this Paragraph, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Third-Party Defendants, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United States will provide the Commonwealth with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Remedial Action Work Plan, and any other plan approved by EPA under this Consent Decree that do not materially alter the requirements of those documents may be made by written agreement between the EPA Project Coordinator and the Settling Third-Party Defendants. Modifications to the Work made pursuant to Paragraph 14 (“Modification of the Work”) may be proposed by EPA. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

111. This Consent Decree and the other two Companion Consent Decrees shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. An opportunity for a public meeting in the affected area will also be provided, pursuant to Section 7003(d) of RCRA. The United States reserves the right to withdraw or withhold its consent to any of the Companion Consent Decrees if comments received in response to the notice or at any public meeting held pursuant to RCRA § 7003 disclose facts or considerations that indicate that any of the Companion Consent Decrees is inappropriate, improper, or inadequate. Settling Third-Party Defendants consent to the entry of all three Companion Consent Decrees without further notice. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. COMPANION CONSENT DECREES

112. The three Companion Consent Decrees are all part of one global settlement. If for any reason the Court declines to enter one or more Companion Consent Decrees, the United States and the Settling Third-Party Defendants shall have thirty (30) days in which they may elect to withdraw or withhold consent for the remaining Companion Consent Decrees.

XXXIV. SIGNATORIES/SERVICE

113. The undersigned representative of the Settling Third-Party Defendants (on behalf of all of the members of the Utility Group), and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

114. Settling Third-Party Defendants hereby agree not to oppose entry by the Court of any of the Companion Consent Decrees or to challenge any provision of any of the Companion Consent Decrees, unless the United States has notified Settling Third-Party Defendants in writing that it no longer supports entry of this Consent Decree.

115. Settling Third-Party Defendants agree that the undersigned representative is authorized to accept service of process by mail on behalf of all the Settling Third-Party Defendants with respect to all matters arising under or relating to this Consent Decree. Settling Third-Party Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXXV. RELATIONSHIP BETWEEN ADMINISTRATIVE ORDER AND CONSENT DECREE

116. Upon the Effective Date of this Consent Decree, the Administrative Order for Remedial Design and Remedial Action, issued by EPA on June 26, 1998, Docket No. III-98-082-DC, shall terminate. To the extent that Settling Third-Party Defendants have fulfilled obligations under the Administrative Order that are also required by this Consent Decree, Settling Third-Party Defendants shall be deemed to have fulfilled such obligations under this Consent Decree.

XXXVI. FINAL JUDGMENT

117. 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 this Consent Decree. The Parties acknowledge that there are no representations, agreements or

understandings relating to the settlement other than those expressly contained in this Consent Decree and the other Companion Consent Decrees. Upon approval and entry of this Consent Decree by the Court, the three Consent Decrees shall constitute the final judgment between and among the United States, Irvin G. Schorsch, John B. Schorsch, and the Settling Third-Party Defendants. 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.

XXXVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

118. Metal Bank Superfund Site Disbursement Special Account and Agreement to Disburse Funds to Settling Third-Party Defendants. On or before the Effective Date, EPA will establish a special account, the Metal Bank Superfund Site Disbursement Special Account, within the EPA Hazardous Substance Superfund. EPA will deposit the full amount of the initial \$1 million payment it previously received from the Union Trust on behalf of New OSI Corporation in accordance with the “Settlement Agreement Respecting Environmental Objections to Debtors’ Third Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code” (“Bankruptcy Settlement Agreement”) and “Chapter 11 Discharge Order Funding Agreement” (“Bankruptcy Settlement Funding Agreement”) entered in *In re: Union Financial Services Group, Inc., et al.*, No. 03-45870-399, U.S. Bankruptcy Court (E.D. Mo.) into the Metal Bank Superfund Site Disbursement Special Account. Subject to the terms and conditions set forth in this Section, EPA agrees, as of the Effective Date, to make the funds in the Metal Bank Superfund Site Disbursement Special Account, including all interest earned on these funds after the Effective Date, available for disbursement to Settling Third-Party Defendants as partial reimbursement for performance of the Work under this Consent Decree. EPA shall disburse funds from the Metal Bank Superfund Site Disbursement Special Account to Settling Third-Party Defendants in accordance with the procedures and milestones for phased disbursement set forth in this Section XXXVII. Settling Third-Party Defendants shall not be entitled to any other funds controlled by EPA in connection with the Metal Bank Superfund Site.

119. Timing, Amount and Method of Disbursing Funds From the Metal Bank Superfund Site Disbursement Special Account. The Settling Third-Party Defendants shall be entitled to draw upon the funds in the Metal Bank Superfund Site Disbursement Special Account as of the Effective Date in accordance with the time frames set forth in this Paragraph. Within sixty (60) days of EPA’s receipt of a Cost Summary and Certification, as defined by Subparagraph 120b, or if EPA has requested additional information under Subparagraph 120b or a revised Cost Summary and Certification under Subparagraph 120c, or within sixty (60) days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section XXXVII, EPA shall disburse the funds from the Metal Bank Superfund Site Disbursement Special Account to the Settling Third-Party Defendants by electronic wire transfer to an account to be established at an institution which will be identified in writing by the Settling Third-Party Defendants in the name of the "Cottman Avenue PRP Group" with Hunton & Williams LLP as the account agent.

120. Requests for Disbursement of Special Account Funds.

a. Settling Third-Party Defendants shall submit to EPA a Cost Summary and Certification, as defined in Subparagraph 120b, covering the Work performed, or to be performed, under this Consent Decree for which the Settling Third-Party Defendants seek reimbursement from the Metal Bank Superfund Site Disbursement Special Account. Settling Third-Party Defendants shall not include in any submission to EPA those costs which have been previously reimbursed with funds obtained by the Settling Third-Party Defendants from any other party.

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid, or to be incurred pursuant to a written contract, by Settling Third-Party Defendants for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 121. Each Cost Summary and Certification shall contain the following statement signed by Settling Third-Party Defendants' Project Coordinator:

To the best of my knowledge, after thorough investigation and review of Settling Third-Party Defendants' documentation of costs incurred and paid for Work performed pursuant to this Consent Decree, I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.”

The Settling Third-Party Defendants' Project Coordinator shall also provide EPA a list of the documents that he or she reviewed in support of the Cost Summary and Certification. Upon request by EPA, Settling Third-Party Defendants shall submit to EPA any additional information that EPA deems necessary for its review and approval of a Cost Summary and Certification.

c. If EPA finds that a Cost Summary and Certification includes a mathematical accounting error, costs or cost estimates excluded under Paragraph 121, costs or cost estimates that are inadequately documented, or costs or cost estimates submitted in a prior Cost Summary and Certification, EPA will notify Settling Third-Party Defendants and provide an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Settling Third-Party Defendants fail to cure the deficiency within thirty (30) days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Settling Third-Party Defendants' costs eligible for disbursement for that submission and disburse the corrected amount to Settling Third-Party Defendants in accordance with the procedures in Paragraph 119 of this Section XXXVII. Settling Third-Party Defendants may dispute EPA's recalculation under this Paragraph pursuant to Section XIX (Dispute Resolution). In no event shall Settling Third-Party Defendants be disbursed funds from the Metal Bank Superfund Site Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

121. Costs Excluded from Disbursement. The following costs are excluded from, and shall not be sought by Settling Third-Party Defendants for, disbursement from the Metal Bank Superfund Site Disbursement Special Account: (a) response costs paid pursuant to Section XVI; (b) any other payments made by Settling Third-Party Defendants to the United States pursuant to this Consent Decree, including, but not limited to, any interest or stipulated penalties paid pursuant to Section XX; (c) attorneys' fees and costs, except to the extent that such costs qualify as response costs under CERCLA; (d) costs of any response activities Settling Third-Party Defendants perform that are not required under, or approved by EPA pursuant to, this Consent Decree; (e) costs related to Settling Third-Party Defendants' litigation, settlement, development of potential contribution claims, or identification of defendants; (f) internal costs of Settling Third-Party Defendants including, but not limited to, salaries, travel, or in-kind services, except for those costs that represent the work of employees of Settling Third-Party Defendants directly performing the Work; or (g) any costs incurred by Settling Third-Party Defendants pursuant to Section XIX (Dispute Resolution).

122. Termination of Disbursements from the Special Account. EPA may terminate its obligation to disburse funds from the Metal Bank Superfund Site Disbursement Special Account under this Consent Decree if it determines that Settling Third-Party Defendants: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within thirty (30) days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by Paragraph 120 within thirty (30) days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section XXXVII because of Settling Third-Party Defendants' failure to submit the Cost Summary and Certification as required by Paragraph 120. The Settling Third-Party Defendants shall be entitled to dispute any action taken by the EPA pursuant to this Paragraph 122 pursuant to the dispute resolution provisions of Section XIX. EPA's obligation to disburse funds from the Metal Bank Superfund Site Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 87, when such assumption of performance of the Work is not challenged by Settling Third-Party Defendants or, if challenged, is upheld under the dispute resolution provisions of Section XIX.

123. Recapture of Special Account Disbursements. Upon the termination of disbursements from the Metal Bank Superfund Site Disbursement Special Account under Paragraph 122, if EPA has previously disbursed funds from the Metal Bank Superfund Site Disbursement Special Account for activities specifically related to the reason for termination (such as the discovery of a materially false or misleading submission after disbursement of funds based on that submission), EPA may submit a bill to Settling Third-Party Defendants for those amounts already disbursed from the Metal Bank Superfund Site Disbursement Special Account specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by Settling Third-Party Defendants. Within twenty (20) days of receipt of EPA's bill, Settling

Third-Party Defendants shall reimburse the Hazardous Substance Superfund for the total amount billed by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making payment, EPA Site/Spill Identification No. 0305, and DOJ Case No. 90-11-2-1183A. Settling Third-Party Defendants shall send the check(s) to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. Upon receipt of payment, EPA may deposit, at its sole discretion, all or any portion of the funds, in the Metal Bank Superfund Site Disbursement Special Account or the Hazardous Substance Superfund. The determination of where to deposit or how to use the funds shall not be subject to challenge by Settling Third-Party Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

124. Balance of Special Account Funds. After EPA issues its written Certification of Completion of the Remedial Action pursuant to this Consent Decree, and after EPA completes all disbursement(s) to Settling Third-Party Defendants in accordance with this Section, if any funds remain in the Metal Bank Superfund Site Disbursement Special Account, EPA, in its sole discretion, may utilize such funds for any other Site-related expenses, or may transfer such funds to the Hazardous Substance Superfund. Any such usage of funds, or transfer of funds to the Hazardous Substance Superfund, shall not be subject to challenge by Settling Third-Party Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

XXXVIII. DISBURSEMENT OF BANKRUPTCY SETTLEMENT FUNDS

125. Identification of Settling Third-Party Defendants as EPA's "Designee". On or before the Effective Date, EPA shall notify the Administrator of the Union Trust that EPA has selected the Settling Third-Party Defendants to be the "EPA's Designee" entitled to submit disbursement notices to and receive payments from the Union Trust in accordance with the Bankruptcy Settlement Agreement and Bankruptcy Settlement Funding Agreement.

126. Submission of Disbursement Notices to Union Trust. The Settling Third-Party Defendants should conform each disbursement notice for the Union Trust to the requirements of the Bankruptcy Settlement Funding Agreement; however, failure to do so shall not constitute a breach of this Consent Decree. The Settling Third-Party Defendants shall provide EPA with a copy of each disbursement notice submitted to the Union Trust for payment at the time of its submission.

127. Coordination of Submission of Disbursement Notices. As EPA's designee under ¶ 125 above, the Settling Third-Party Defendants will be entitled to apply for and receive disbursements from the Metal Bank Superfund Site Disbursement Special Account, under the

terms set forth in ¶¶ 118-124 above, and from the Union Trust, as provided in ¶ 2.4 of the Discharge Order Funding Agreement and the accompanying EPA Excess Funding Escrow Agreement under the bankruptcy settlement. The Settling Third-Party Defendants may seek disbursement from the Union Trust of the following amounts: up to \$5.3675 million in 2005, plus any 2004 Carryover Amount; up to \$4.3675 million in 2006, plus any 2005 Carryover Amount; and the unpaid balance up to a total of \$12.235 million thereafter. EPA shall also be entitled to seek reimbursement for up to \$650,000 for its response costs incurred in each of 2005 and 2006, for a total of \$1.3 million.

128. Enforcement of Rights Under Bankruptcy Settlement. In the event of any dispute between either of the Parties and the Union Trust or Newco over a disbursement notice, EPA and the Settling Third-Party Defendants will cooperate in any attempt to resolve such dispute. In the event of a default by the Union Trust or Newco in the performance of any of their payment obligations under the Bankruptcy Settlement Agreement and Bankruptcy Settlement Funding Agreement, the EPA will take action to enforce the terms of the Bankruptcy Settlement so as to preserve the Settling Third-Party Defendants' ability to recover the funds promised for the remediation of the Metal Bank Site. The Parties expressly agree, however, that any dispute with, or default by, either the Union Trust or Newco in connection with their obligations under the Bankruptcy Settlement shall not provide the Settling Third-Party Defendants with cause to delay or cease the Work contemplated under this Consent Decree, pursuant to Section XVIII (Force Majeure) or any other applicable legal theory.

SO ORDERED THIS _____ DAY OF _____, 2005.

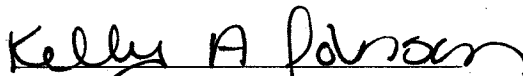
Honorable James T. Giles
Chief Judge

SIGNATURES

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Union Corp., et al.*, Civil Action 80-1589, relating to the Metal Bank Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 8/15/05



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

Date: July 21, 2005

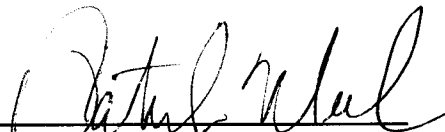


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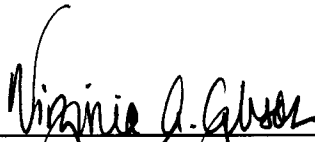
THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Union Corp., et al.*, Civil Action 80-1589, relating to the Metal Bank Superfund Site.

Respectfully submitted,


Date: 8-29-05


PATRICK L. MEEHAN
United States Attorney

Date: 8/29/05

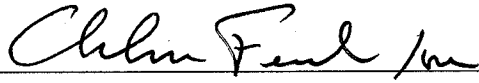

VIRGINIA A. GIBSON
Chief, Civil Division

Date: 8-29-05



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THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States v. Union Corp., et al.*, Civil Action 80-1589, relating to the Metal Bank Superfund Site.

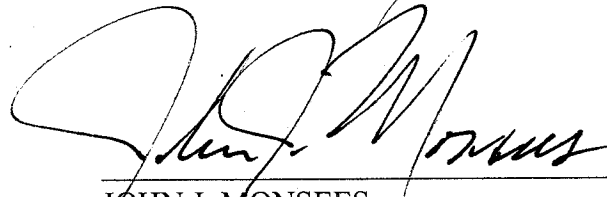
Date: 7/14/05


DONALD S. WELSH
Regional Administrator

Date: 6/17/05


WILLIAM C. EARLY
Regional Counsel

Date: 6/16/05


JOHN J. MONSEES
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, PA 19103-2029

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Union Corp., et al.*, Civil Action 80-1589, relating to the Metal Bank Superfund Site.

**FOR THE SETTTLING THIRD-PARTY
DEFENDANTS:**

BALTIMORE GAS AND ELECTRIC COMPANY
CONSOLIDATED EDISON COMPANY OF NEW
YORK, INC.

JERSEY CENTRAL POWER & LIGHT
COMPANY

LONG ISLAND LIGHTING COMPANY d/b/a
LIPA

METROPOLITAN EDISON COMPANY
ORANGE AND ROCKLAND UTILITIES
PECO ENERGY COMPANY

POTOMAC ELECTRIC POWER COMPANY
PP&L ELECTRIC UTILITIES CORPORATION


PUBLIC SERVICE ELECTRIC AND GAS
COMPANY

VIRGINIA ELECTRIC AND POWER COMPANY

By their Attorneys:

Date:

July 6, 2005



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