UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

UNITED STATES OF AMERICA,
Plaintiff, and

STATE OF TEXAS,
Plaintiff in Intervention,
v.

Alcoa Inc.; Baker Hughes Inc.; BASF Corporation; BP Products North America Inc.; Welchem, Inc.; Champion Technologies, Inc. (f/k/a Champion Chemicals, Inc.); Chevron U.S.A. Inc.; Dixie Chemical Company, Inc.; Exxon Mobil Corporation; Mobil Oil Exploration & Producing Southeast Inc.; Mobil Exploration and Producing North America Inc.; Reliance Electric Company; FMC Corporation; Groendyke Transport, Inc.; Halliburton Energy Services, Inc.; Marathon Oil Company; Mission Petroleum Carriers, Inc.; Nalco Company; Occidental Chemical Corporation; Perma-Fix Environmental Services, Inc.; Pharmacia Corporation (f/k/a Monsanto Company); Quality Carriers, Inc.; Quality Distribution, Inc.; Rohm and Haas Company; Texaco, Inc.; Texas Instruments Incorporated; The Dow Chemical Company; The Goodyear Tire & Rubber Company; Trimac Transportation, Inc.; Ameri-Liquid Transport, Inc.; DSI Transports, Inc. (now known as Trimac Transportation South Inc.); Liquid Transporters Inc. (now known as Trimac Transportation East Inc.); Robertson Tank Lines (now known as Trimac Transportation Group Inc.); Ryder Bulk Transportation Services (now known as Triplus Inc.); Trimac Bulk Transportation, Inc. (now known as Triplus Inc.); Union Carbide Corporation; Union Pacific Railroad Co.; Land Navigator, Ltd.; and the Defendants Listed in Appendices F and G (excluding the Texas Commission on Environmental Quality),

Defendants.

Civil No: 3:12-cv-210

Remedial Design/Remedial Action
Consent Decree

STATE OF TEXAS,

Crossclaimant,

v.

UNITED STATES OF AMERICA,

Crossdefendant.

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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"), the National Oceanic and Atmospheric Administration ("NOAA"), and the Fish and Wildlife Service of the United States Department of the Interior ("FWS"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, *inter alia*: (1) Natural Resource Damages; (2) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Malone Service Company Superfund Site in Texas City, Texas, together with accrued interest; and (3) performance of response actions by the Settling Defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Texas on December 22, 2009, of negotiations with potentially responsible parties ("PRPs") regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State of Texas ("State"), on behalf of the Texas Commission on Environmental Quality ("TCEQ"), has filed a complaint against the Settling Defendants and the United States in this Court alleging that the Settling Defendants and Settling Federal Agencies are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and that the Settling Defendants are liable to the State under Section 361.197 of the Texas Solid Waste Disposal Act ("TSWDA"), Tex. Health & Safety Code § 361.197. In the same complaint, the State, on behalf of the Texas Trustees (defined herein as the Texas Parks and Wildlife Department ("TPWD"), the Texas General Land Office ("TGLO"), and TCEQ) alleges that the Settling Defendants and the Settling Federal Agencies are liable to the Texas Trustees for Natural Resource Damages under Section 107 of CERCLA, 42 U.S.C. § 9607, and that the Settling Defendants are liable to the Texas Trustees under the Texas Water Code § 26.265.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified NOAA and FWS on December 23, 2009, of negotiations with PRPs regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

F. The Settling Defendants do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent and substantial endangerment to the public health or welfare or the environment. Settling Federal Agencies do not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by Settling Defendants or any claim by the State.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 14, 2001, 66 Fed. Reg. 32235.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, EPA and certain Principal Settling Defendants commenced on September 29, 2003, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to 40 C.F.R. § 300.430.

I. Those Principal Settling Defendants completed a Remedial Investigation ("RI") Report in April 2006 and a Feasibility Study ("FS") Report in June 2008. Principal Settling Defendants also have been performing storm water management and Site control, including removal of liquid wastes from aboveground storage tanks, under EPA oversight.

J. On January 13, 2009, the Site property was transferred to Land Navigator, Ltd. by a Special Warranty Deed ("Special Warranty Deed") containing restrictions that, among other things, prevent the following: any activities on the property that would interfere with remediation; any future development of the property for residential, commercial office, or industrial purposes; and any groundwater extraction or construction of improvements in the vicinity of contaminated groundwater until after EPA has certified completion of remedial action (including attainment of all cleanup standards). Land Navigator, Ltd. has provided a Grant of Access Easement, dated February 20, 2009, ("Grant of Access Easement") to the MCP (as defined in the Grant), the United States, and the State for purposes of implementing or overseeing any necessary remediation on the property. The Special Warranty Deed, Grant of Access Easement, and a current title insurance commitment were provided to EPA on August 15, 2009.

K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on May 20, 2009, 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 Superfund Division Director, EPA Region 6, based the selection of the response action.

L. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on September 30, 2009, on which the State has given its concurrence. The ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

M. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by Principal Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

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

O. The Texas Trustees, NOAA, and FWS ("Trustees") are the natural resource trustees for the Site, coordinating the necessary natural resource damage assessment and restoration activities.

P. 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. Sections 1331 and 1345, and 42 U.S.C. Sections 9606, 9607, and 9613(b). This Court has supplemental jurisdiction over the state law claims, brought under the Texas Health and Safety Code and the Texas Water Code, pursuant to 28 U.S.C. § 1367. This Court also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

3. Principal Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Principal Settling 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. Principal Settling 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. Principal Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Principal Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

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

"Cashout Settling Defendants" shall mean the Major Cashout Settling Defendants and the De Minimis Cashout Settling Defendants, listed in Appendices F and G, respectively.

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

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

"De Minimis Cashout Settling Defendants" shall mean those parties listed in Appendix G.

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

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

"FWPCA" shall mean the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251–1387 (also known as the Clean Water Act).

"Future NRD Assessment Costs" shall mean the costs of assessing Natural Resource Damages incurred by the Texas Trustees and FWS after February 28, 2010, and incurred by NOAA after February 27, 2010.

"Future Oversight Costs" shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Principal Settling Defendants' performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports, and other deliverables submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Future Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to Paragraph 9 (Notice to Successors-in-Title), Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 49 (Funding for Work Takeover), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs incurred in connection with Dispute Resolution pursuant to Section XX (Dispute Resolution) and all litigation costs.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Consent Decree, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred

pursuant to Paragraph 9 (Notice to Successors-in-Title), Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation), XV (Emergency Response), Paragraph 49 (Funding for Work Takeover), and Section XXX (Community Relations). Future Response Costs shall also include all Interim Response Costs.

"FWS" shall mean the Fish and Wildlife Service of the United States Department of the Interior and any successor departments or agencies of the United States.

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

"Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between September 30, 2009, and the Effective Date, or (b) incurred prior to the Effective Date but paid after that date.

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

"Interest Earned" shall mean interest earned on amounts in the MSC 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.

"Major Cashout Settling Defendants" shall mean those parties listed in Appendix F.

"MSC Site Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), pursuant to administrative orders on consent for the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g).

"MSC Site Disbursement Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and Paragraph 63.

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

"Natural Resource Damages" or "NRD" means damages, including the reasonable costs of damages assessment and Restoration Costs, recoverable pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Section 311(f)(4) and (5) of the FWPCA, 33 U.S.C. § 1321(f)(4)

and (5), and/or Texas Water Code § 26.265 by the United States and/or the Texas Trustees on behalf of the public for injury to, destruction of, loss of, or loss of use of natural resources or resource services, resulting from the release of hazardous substances at or from the Site. "NRD" includes Past NRD Assessment Costs, Future NRD Assessment Costs, and Restoration Costs.

"NOAA" shall mean the National Oceanic and Atmospheric Administration of the United States Department of Commerce and any successor departments or agencies of the United States.

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

"Owner Settling Defendant" shall mean Land Navigator, Ltd., a wholly owned subsidiary of Project Navigator, Ltd.

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

"Parties" shall mean the United States, the State of Texas, and Settling Defendants.

"Past NRD Assessment Costs" shall mean the costs of assessing Natural Resource Damages incurred by the Texas Trustees and FWS on or before February 28, 2010, and incurred by NOAA on or before February 27, 2010.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through September 30, 2009, plus Interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD and Sections II and III of the SOW and any modified standards established pursuant to this Consent Decree.

"Plaintiffs" shall mean the United States and the State of Texas.

"Principal Settling Defendants" shall mean those Parties identified in Appendix D.

"Proprietary Controls" shall mean easements or covenants running with the land that (a) limit land, water, or resource use and/or provide access rights and (b) are created pursuant to common law or statutory law by an instrument that is recorded by the owner in the appropriate land records office. Proprietary Controls include, but are not limited to, the Restrictive Covenants in Paragraph 5 of the Special Warranty Deed, the access easements in the Grant of Access Easement (referenced in Paragraph I.J of this Consent Decree), and any Additional Proprietary Controls imposed pursuant to Paragraph 26.c of this Consent Decree.

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

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 30, 2009, by the Director of the Superfund Division, EPA Region 6, or his/her delegate, and all attachments thereto. The ROD is attached as Appendix A.

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

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 and approved by EPA, and any modifications thereto.

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

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 and approved by EPA, and any modifications thereto.

"Restoration Costs" shall mean costs incurred in connection with any action or combination of actions to restore, replace, rehabilitate, or acquire the equivalent of any natural resources or services injured, lost, or destroyed as a result of the release of hazardous substances at or from the Site. Such costs include costs incurred for the design, implementation, permitting (as necessary), monitoring, and oversight of restoration projects and the costs of complying with the requirements of the law to conduct a restoration planning and implementation process.

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

"Settling Defendants" shall mean the Principal Settling Defendants, the Major Cashout Settling Defendants, and the De Minimis Cashout Settling Defendants, listed in Appendices D, F, and G, respectively, and the Owner Settling Defendant.

"Settling Federal Agencies" shall mean the United States Department of Defense (including, but not limited to, the Army, Navy, Air Force, and Defense Logistics Agency), the United States Department of Homeland Security (including, but not limited to, the United States Coast Guard); United States Department of Veterans Affairs; the United States Department of the Interior; the United States National Aeronautics and Space Administration; the United States Postal Service; the United States General Service Administration; and the United States Department of Agriculture.

"Site" shall mean the Malone Service Company Superfund Site, encompassing approximately 150 acres, located at 5300 Campbell Bayou Road in Texas City, Galveston County, Texas, and depicted generally on the maps attached as Appendix C, including groundwater beneath the Site and any Swan Lake/Galveston Bay sediments containing hazardous substances from the Site.

"State" shall mean the State of Texas, acting on behalf of the TCEQ with respect to claims for State Past Response Costs and State Future Response Costs, and acting on behalf of the Texas Trustees with respect to NRD claims.

"State Past Response Costs" shall mean all costs that the State has paid at or in connection with the Site pursuant to Section 133(c) of the TSWDA, Tex. Health & Safety Code § 361.133(c), through September 30, 2009, plus Interest on all such costs that has accrued through such date.

"State Future Response Costs" shall mean all costs that the State incurs in implementing, overseeing, or enforcing this Consent Decree.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and O&M at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

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

"TCEQ" shall mean the Texas Commission on Environmental Quality, an agency of the State of Texas, and its successor agencies.

"Texas Trustees" shall mean the State of Texas natural resource damage trustees, comprising the TCEQ, TPWD, and the TGLO, as appointed by the Governor of Texas.

"TGLO" shall mean the Texas General Land Office, an agency of the State of Texas, and its successor agencies.

"TPWD" shall mean the Texas Parks and Wildlife Department, an agency of the State of Texas, and its successor agencies.

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

"Trustees" shall mean the Texas Trustees, NOAA, and FWS, the natural resource trustees for the Site.

"TSWDA" shall mean the Texas Solid Waste Disposal Act, Tex. Health & Safety Code § 361.001 *et seq.*

"United States" shall mean the United States of America and each department, agency and instrumentality of the United States, including EPA, the Settling Federal Agencies, NOAA, and FWS.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "solid waste" or "hazardous substances" under Tex. Health & Safety Code §§ 361.003(11 & 34) and 361.133(c).

"Work" shall mean all activities and obligations Principal Settling Defendants are required to perform under this Consent Decree, except the payments required under Paragraph 62 and the activities required under Section XXVI (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at the Site by Principal Settling Defendants, to pay response costs of the Plaintiffs, and to resolve the claims of Plaintiffs against Settling Defendants and the claims of the State and Settling Defendants which have been or could have been asserted against the United States with regard to this Site as provided in this Consent Decree.

6. Commitments by Settling Defendants and Settling Federal Agencies.

a. Principal Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by Principal Settling Defendants and approved by EPA pursuant to this Consent Decree. As provided in this Consent Decree, Settling Defendants shall pay the United States and the State their response costs (including Past Response Costs, Future Response Costs, State Past Response Costs, and State Future Response Costs), and Natural Resource Damages (including Past and Future NRD Assessment Costs). As provided in this Consent Decree, Settling Federal Agencies shall pay EPA for Past Response Costs and Future Response Costs, the State for its State Past Response Costs and State Future Response Costs, Settling Defendants for their past and future response costs, and the Trustees for Natural Resource Damages (including Past and Future NRD Assessment Costs).

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

7. Compliance With Applicable Law. All activities undertaken by Principal Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Principal Settling 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 and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

8. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, 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, Principal

Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

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

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

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

a. The Special Warranty Deed (referenced in Paragraph I.J of this Consent Decree) that transferred ownership of the Site to the Owner Settling Defendant is recorded in the land records office of Galveston County, Texas. The Special Warranty Deed describes the real property and provides notice to all successors-in-title that the real property is part of the Site and subject to the land use restrictions set forth in the Special Warranty Deed. Owner Settling Defendant shall, within 15 days after the Effective Date, submit to TCEQ for review and to EPA for review and approval a proposed notice to be filed with the land records office of Galveston County, Texas, that gives notice that EPA has selected a remedy for the Site, and that Principal Settling Defendants have entered into a Consent Decree requiring them to implement the remedy. The notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Owner Settling Defendant shall record the notice(s) within ten days of EPA's approval of the notice. Owner Settling Defendant shall provide EPA with a certified copy of the recorded notice(s) within ten days of recording such notice(s). Within 30 days of the issuance of EPA's Certification of Completion of Remedial Action under Paragraph 51, Owner Settling Defendant or the Principal Settling Defendants shall, after consulting with TCEQ, submit to EPA for review and approval a proposed notice to be filed with the land records office of Galveston County, Texas, that gives notice of the location of the RCRA Subtitle C equivalent containment cell (including at least metes and bounds) and the location and concentrations of contaminants of concern present in groundwater and soil at the Site based on available data.

b. Owner Settling Defendant shall, at least 60 days prior to any Transfer of any real property located at the Site, give written notice: (i) to the transferee regarding the Consent Decree, the Grant of Access Easement, the Special Warranty Deed, and any Institutional Controls regarding the real property; and (ii) to EPA and the State regarding the proposed Transfer, including the name and address of the transferee and the date on which the transferee was notified pursuant to this Subparagraph.

c. Owner Settling Defendant may Transfer any real property located at the Site only if Owner Settling Defendant has obtained an agreement from the transferee, enforceable by Principal Settling Defendants and the United States, to (i) allow access and restrict land/water use, pursuant to Paragraphs 27.a and 27.b, and (ii) subordinate its rights to the Proprietary Controls in the Special Warranty Deed and the Grant of Access Easement and any Additional Proprietary Controls imposed pursuant to Paragraph 26.c, and EPA has approved the agreement

in writing. If, after a Transfer of the real property, the transferee fails to comply with the agreement provided for in this Paragraph 9.c, Owner Settling Defendant and Principal Settling Defendants shall take all reasonable steps to obtain the transferee's compliance with such agreement. The United States may seek the transferee's compliance with the agreement and/or assist Owner Settling Defendant and Principal Settling Defendants in obtaining compliance with the agreement. Principal Settling Defendants shall reimburse the United States under Section XVI (Payments for Response Costs, NRD, & NRD Assessment Costs), for all costs incurred, direct or indirect, by the United States regarding obtaining compliance with such agreement, including, but not limited to, the cost of attorney time.

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

VI. PERFORMANCE OF THE WORK BY PRINCIPAL SETTLING DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Principal Settling Defendants pursuant to Sections VI (Performance of the Work by Principal Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), IX (Access and Institutional Controls), and XV (Emergency Response) shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. Within thirty (30) days after the lodging of this Consent Decree, Principal Settling Defendants shall notify EPA and the State 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, Principal Settling Defendants shall demonstrate that the proposed contractor has a quality assurance system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed regarding hiring of the proposed contractor. If at any time thereafter, Principal Settling Defendants propose to change a Supervising Contractor, Principal Settling Defendants shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree. If EPA issues, before the date of lodging of this Consent Decree, an authorization to proceed regarding the hiring of a proposed Supervising Contractor, for the purposes of this Decree and the SOW, the date of the authorization to proceed shall be deemed to be the date of lodging.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Principal Settling Defendants in writing. Principal Settling Defendants shall submit to EPA and

the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Principal Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within 21 days of EPA's authorization to proceed.

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

11. General RD/RA Work Plan and Remedial Design.

a. Within 45 days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Principal Settling Defendants shall hold a Scoping Meeting with EPA pursuant to the SOW. Within 90 days after the Scoping Meeting, Principal Settling Defendants shall submit to EPA and the State a work plan for the design and performance of the Remedial Action at the Site ("General RD/RA Work Plan"). The General RD/RA Work Plan and subsequent work plans and design documents for the Work collectively shall provide for the design and performance of the remedy set forth in the ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree, and/or the SOW. Upon its approval by EPA, the General RD/RA Work Plan shall be incorporated into and enforceable under this Consent Decree. At the same time the General RD/RA Work Plan is submitted, Principal Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The General RD/RA Work Plan shall include plans and schedules for implementation of remedial design, pre-design tasks and remedial action activities as described in the SOW. The General RD/RA Work Plan shall be submitted with Component Plans, as described in the SOW, which shall include, but are not limited to: (1) the Health and Safety Plan; (2) Air Monitoring Plan; (3) Hurricane and Flooding Contingency Plan; (4) Storm Water Management Plan; (5) Spill Control and Countermeasures Plan; (6) Sampling and Analysis Plan; (7) the Quality Assurance Project Plan ("QAPP"); (8) Project Management Plan (the project delivery strategy); (9) Data Management Plan; (10) Permitting Plan (if required); (11) Construction Management Plan; (12) Construction Quality Assurance Plan ("CQAP"); and (13) the Community Relations Plan. The CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official independent of the Supervising Contractor to conduct a quality assurance program during the construction phase of the project. The CQAP shall detail the methods and procedures to be used to verify achievement of Performance Standards.

c. After the Effective Date and approval of the General RD/RA Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submission of the Health and Safety Plan for all field activities to EPA and the State, Principal Settling

Defendants shall implement the General RD/RA Work Plan. Principal Settling Defendants shall submit to EPA and the State all plans, reports, and other deliverables required under the SOW and the approved General RD/RA Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables).

d. The SOW divides the Remedial Design and Remedial Action into four Phases. Phases Two, Three, and Four shall each have a separate prefinal and final Remedial Design, as well as a separate remedial action work plan ("Remedial Action Work Plan" or "RA Work Plan"). The prefinal and final design submissions for Phases Two, Three, and Four shall include, at a minimum, the design criteria and final plans and specifications for that phase of the Work. In addition, the following plans shall include updated schedules for completion of subsequent Work activities, as set forth in the SOW: the Phase One Work Plans; the Pre-Design Investigations Report; the Phase Two RA Work Plan; the Phase Two Final Design; the Phase Three RA Work Plan; the Phase Three Final Design; and the Phase Four RA Work Plan. Upon their approval by EPA, the Phase One Work Plans; the Pre-Design Investigations Report; the Phase Two RA Work Plan; the Phase Two Final Design; the Phase Three RA Work Plan; the Phase Three Final Design; and the Phase Four RA Work Plan shall be incorporated into and enforceable under this Consent Decree. An Operation and Maintenance Plan shall be submitted as part of the Final Design of Phase Four.

12. Remedial Action.

a. Within the times specified in EPA-approved schedules pursuant to the SOW, Principal Settling Defendants shall submit Remedial Action Work Plans to EPA and the State for the performance of the Remedial Action activities of Phases Two, Three, and Four at the Site. The Remedial Action Work Plans shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in the Final Remedial Designs and approved by EPA. Upon their approval by EPA, the Remedial Action Work Plans shall be incorporated into and enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plans, Principal Settling Defendants shall submit to EPA and the State as needed an updated Construction Health and Safety Plan and Spill Control and Countermeasures Plan for field activities required by the Remedial Action Work Plans, which conform to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plans for each Phase shall include, but are not limited to, the following: (1) schedule for completion of the Remedial Action activities for that phase; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methods for satisfying permitting requirements; (5) methodology for implementing the Spill Control and Countermeasures Plan; (6) tentative formulation of the Remedial Action team; (7) an updated Construction Quality Assurance Plan (by construction contractor); and (8) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plans also shall include the methodology for implementing the Construction Quality Assurance Plan and a schedule for implementing all Remedial Action tasks identified in the final design submission for that Phase

and shall identify the initial formulation of Principal Settling Defendants' Remedial Action project team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plans by EPA, after a reasonable opportunity for review and comment by the State, Principal Settling Defendants shall implement the activities required under the Remedial Action Work Plans. Principal Settling Defendants shall submit to EPA and the State all reports and other deliverables required under the approved Remedial Action Work Plans in accordance with the approved schedules for review and approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Unless otherwise directed by EPA, Principal Settling Defendants shall not commence physical Remedial Action activities at the Site for any Phase prior to approval of the Remedial Action Work Plan for that Phase.

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

14. Modification of SOW or Related Work Plans.

a. If EPA determines that it is necessary to modify the work specified in the SOW and/or in work plans developed pursuant to the SOW to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, and such modification is consistent with the scope of the remedy set forth in the ROD, then EPA may issue such modification in writing and shall notify Principal Settling Defendants of such modification. For the purposes of this Paragraph and Paragraphs 51 (Completion of the Remedial Action) and 52 (Completion of the Work) only, the "scope of the remedy set forth in the ROD" is:

1. Sludge (Principal Threat Waste): Remove Site sludge, including all sludge from the Site Earthen Impoundment (which includes the Sludge Pit and Oil Pit), API separators, ASTs (tanks), and source material located in other areas of the Site below ground surface (in subsurface soils), and solidify. Transfer and consolidate the solidified sludge into an on-site, aboveground RCRA Subtitle C equivalent cell.

2. Soil: Remove and consolidate unsolidified soils with contamination exceeding the Site remediation levels into the RCRA Subtitle C equivalent cell. Backfill excavated areas to ground surface with clean soil, except to the extent the Parties agree that excavated areas need not be backfilled.

3. Ground Water: Install ground water monitoring wells to monitor Site ground water and the RCRA Subtitle C equivalent cell. Ground water monitoring of contaminated ground water plumes will document if natural attenuation is degrading the plumes, and will detect any off-site migration of organic contaminants in ground water above the TCEQ Class 3 Groundwater Protective Concentration Levels (PCLs) and metals concentrations greater than TCEQ Class 3 Groundwater PCLs or background levels, whichever are higher. If the EPA determines that contaminants in ground water are migrating to a Site boundary monitoring well, and potentially off-site, at concentrations above the TCEQ Class 3 Groundwater PCLs, or migrating to an aquifer not currently known to be contaminated, an active remedy (e.g., extraction, containment) may be

required. Monitoring of groundwater is required for 30 years; EPA may modify this monitoring period if monitoring data support that the plumes are stable or shrinking (i.e., that natural attenuation is effective in containing or decreasing the plumes) and therefore that there is no potential for off-site migration of contaminants in ground water over the foregoing standards.

4. Institutional Controls, such as a notification, information device, deed restriction, restrictive covenant, or easement, have been or will be placed on the Site property to protect the integrity of the remedy and to prevent exposure to hazardous substances. The Institutional Controls have been or will be prepared and attached to the deed and will include reports showing the location and concentrations of contaminants of concern present in the ground water underlying the Site. For the Institutional Controls component for ground water, information on the nature and extent of ground water contamination will be updated annually to EPA and TCEQ. Institutional Controls, such as prohibiting construction of buildings within 100 feet of contaminated ground water areas of the Site, will be used to prevent inhalation exposure from vapor intrusion. The Institutional Controls will restrict any excavation or drilling to ground water, and will also prohibit disturbance of the RCRA Subtitle C equivalent cell. The Institutional Controls have been or will be recorded on the property deeds filed with the county. Institutional Controls will provide long-term protection by reducing the potential risk for people to be exposed.

If Principal Settling Defendants object to the modification they may, within 30 days after EPA's notification, seek dispute resolution under Paragraph 80 (Record Review).

b. The SOW and/or related work plans shall be modified: (i) in accordance with the modification issued by EPA; or (ii) if Principal Settling Defendants invoke dispute resolution, in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and Principal Settling Defendants shall implement all work required by such modification. Principal Settling Defendants shall incorporate the modification into the Remedial Design or Remedial Action Work Plans under Paragraph 11 or 12, as appropriate.

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

d. The EPA Project Coordinator may approve extensions to any schedule in the SOW or any work plan approved by EPA under the SOW without the signatures of the Parties or approval of the Court, but the total number of days for all extensions granted by the EPA Project Coordinator combined shall not exceed 180 days. Any extensions beyond a combined total of 180 days may be granted only with the approval of the EPA Branch Chief supervising the EPA Project Coordinator. All requests for extensions and EPA approvals of any extensions shall be made in writing.

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

16. Off-Site Shipment of Waste Material.

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

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

VII. REMEDY REVIEW

17. Periodic Review. Principal Settling Defendants shall conduct any studies and investigations that EPA requests 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 years as required by Section 121(c) of CERCLA, 42 U.S.C.§ 9621(c), and any applicable regulations.

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. Principal Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Principal Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, EPA may require Principal Settling Defendants to perform such further response actions, but only to the extent that the reopener conditions in Paragraph 97 or Paragraph 98 (United States' Pre- and Post-certification Reservations) are satisfied. Principal Settling Defendants may invoke the procedures set forth in Section XX (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraph 97 or Paragraph 98 of Section XXII (Covenants by Plaintiffs) are satisfied, (b) EPA's determination that the Remedial Action is not protective of human health and the

environment, or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 80 (Record Review).

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

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. Quality Assurance.

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

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

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

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

24. Principal Settling Defendants shall submit two hard copies each to EPA and the TCEQ of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Principal Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA or TCEQ, respectively, agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. The Site is presently owned and controlled by the Owner Settling Defendant, subject to control by Principal Settling Defendants acting as and through members of the "MCP" as defined in the Special Warranty Deed dated January 13, 2009, (referenced in Paragraph I.J of this Consent Decree), and subject to access requirements and land and groundwater use restrictions as set forth in the Special Warranty Deed. As long as the Site, or any other real property where access or land/water use restrictions are needed, is owned or controlled by the Owner Settling Defendant or is owned, controlled, or subject to control by any of Principal Settling Defendants or by the Principal Settling Defendants acting as and through members of the "MCP" as defined in the Special Warranty Deed dated January 13, 2009:

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

(1) Monitoring the Work;

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

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

(4) Obtaining samples;

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

(6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

(7) Implementing the Work pursuant to the conditions set forth in Paragraph 103 (Work Takeover);

(8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Principal Settling Defendants or their agents, consistent with Section XXV (Access to Information);

(9) Assessing Principal Settling Defendants' compliance with the Consent Decree;

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

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. commencing on the date of lodging of the Consent Decree, Owner Settling Defendant and Principal Settling Defendants shall not use the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The restrictions shall preclude, at a minimum, the following (except with respect to activities to implement response actions):

(1) any excavation below two feet;

(2) use of, or drilling to, ground water;

(3) disturbance of the on-site cap;

(4) construction of buildings in areas impacted by the ground water, and on-site construction or use of buildings without prior performance of a vapor intrusion study (OSWER EPA530-D-02-004, November 2002, or subsequent vapor intrusion guidance); and

(5) residential, commercial, or industrial Site development.

c. Owner Settling Defendant and/or Principal Settling Defendants shall:

(1) if EPA determines that Proprietary Controls in addition to (or instead of) those contained in the Special Warranty Deed and the Grant of Access Easement are

necessary, within 21 days of EPA's written request, consult with TCEQ regarding the form of the Proprietary Controls, and, within 60 days of EPA's written request, submit to TCEQ for review and to EPA for review and approval regarding such real property: (i) draft Additional Proprietary Controls that implement EPA's request and that are enforceable under state law; and (ii) a current title insurance commitment or other evidence of title acceptable to EPA, which shows title to the land affected by the Additional Proprietary Controls to be free and clear of all prior liens and encumbrances (except when EPA waives the release or subordination of such prior liens or encumbrances or when, despite best efforts, Principal Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances);

(2) within 15 days of EPA's approval and acceptance of the Additional Proprietary Controls and the title evidence, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, record the Additional Proprietary Controls with the appropriate land records office. Within 30 days of recording the Additional Proprietary Controls, such Principal Settling Defendants shall provide EPA and copy TCEQ with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Additional Proprietary Controls showing the clerk's recording stamps. If the Additional Proprietary Controls are to be conveyed to the United States, the Additional Proprietary Controls 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 shall be obtained as required by 40 U.S.C. § 3111.

d. Owner Settling Defendant and/or Principal Settling Defendants shall not amend, modify, or terminate the Grant of Access Easement, the Restrictive Covenants set forth in the Special Warranty Deed, or any Additional Proprietary Controls imposed pursuant to Paragraph 26.c without first receiving EPA's written approval of any changes, after submitting any proposed changes to TCEQ for review and to EPA for review and approval.

27. If ownership of the Site is transferred to persons other than the Owner Settling Defendant, Owner Settling Defendant and Principal Settling Defendants shall secure from such persons:

a. an agreement to provide access thereto for the United States, the State, and Principal Settling Defendants, and their representatives, contractors, and subcontractors, to conduct any activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraph 26.a;

b. an agreement, enforceable by Principal Settling Defendants and the United States, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. The agreement shall include, but not be limited to, the land/water use restrictions listed in Paragraph 26.b and any Additional Proprietary Controls imposed pursuant to Paragraph 26.c; and

c. the execution and recordation in the appropriate land records office of an acknowledgment that the property is subject to the access easement as set forth in the Special

Warranty Deed and Grant of Access Easement, and all Proprietary controls, including the Restrictive Covenants in Paragraph 5 of the Special Warranty Deed, and any Additional Proprietary Controls imposed pursuant to Paragraph 26.c.

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

a. an agreement to provide access thereto for the United States, the State, and Principal Settling Defendants, and their representatives, contractors, and subcontractors, to conduct any activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraph 26.a;

b. an agreement, enforceable by Principal Settling Defendants and the United States, to refrain from using the Site, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Materials or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action. If EPA determines that land/water use restrictions are needed for such real property, the agreement shall include, but not be limited to, the land/water use restrictions listed in Paragraph 26.b; and

c. the execution and recordation in the appropriate land records office of Proprietary Controls, that (i) grant a right of access to conduct any activity regarding the Consent Decree including, but not limited to, those activities listed in Paragraph 26.a, and (ii) grant the right to enforce any land/water use restrictions set forth in Paragraph 26.b that EPA determines are required, including, but not limited to, the specific restrictions listed therein.

(1) The Proprietary Controls shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives; (ii) the State and its representatives; (iii) Principal Settling Defendants and their representatives; and/or (iv) other appropriate grantees. The Proprietary Controls, other than those granted to the United States, shall include a designation that EPA (and/or the State as appropriate) is a "third party beneficiary," allowing EPA and TCEQ to maintain the right to enforce the Proprietary Control without acquiring an interest in real property. If any Proprietary Controls are granted to any Principal Settling Defendants pursuant to this Paragraph, then such Principal Settling Defendants shall monitor, maintain, report on, and enforce such Proprietary Controls.

(2) In accordance with the schedule set forth in the O&M Plan, Principal Settling Defendants shall submit to TCEQ for review and to EPA for review and approval regarding such property: (i) if requested by EPA, a draft Proprietary Control, drafted after consultation with TCEQ, containing the substance of the Restrictive Covenants in Paragraph 5 of the Special Warranty Deed, the access easements in the Grant of Access Easement (referenced in Paragraph I.J of this Consent Decree), and any Additional Proprietary Controls imposed pursuant to Paragraph 26.c of this Consent Decree, or as EPA otherwise specifies, and that is enforceable under state law; and (ii) a current title insurance commitment, or other evidence of title acceptable to EPA, which shows title to the land affected by the Proprietary Control to be free and clear of all prior liens and encumbrances (except when EPA waives the

release or subordination of such prior liens or encumbrances or when, despite best efforts, Principal Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

(3) Within 15 days of EPA's approval and acceptance of the Proprietary Control and the title evidence, Principal Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment, or other title evidence, to affect the title adversely, the Proprietary Control shall be recorded with the appropriate land records office. Within 30 days of the recording of the Proprietary Control, Principal Settling Defendants shall provide EPA and copy TCEQ with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded Proprietary Control showing the clerk's recording stamps. If the Proprietary Control is to be conveyed to the United States, the Proprietary Control 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. § 3111.

29. For purposes of Paragraphs 26 and 28, "best efforts" includes the payment of reasonable sums of money to obtain access, an agreement to restrict land/water use, a Proprietary Control, and/or an agreement to release or subordinate a prior lien or encumbrance. The United States may, as it deems appropriate, assist Principal Settling Defendants in obtaining access, agreements to restrict land/water use, Proprietary Controls, or the release or subordination of a prior lien or encumbrance. Principal Settling Defendants shall reimburse the United States under Section XVI (Payments for Response Costs, NRD, & NRD Assessment Costs) for all costs incurred, direct or indirect, by the United States in obtaining such access, agreements to restrict land/water use, Proprietary Controls, 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.

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

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

X. REPORTING REQUIREMENTS

32. In addition to any other requirement of this Consent Decree, Principal Settling Defendants shall submit two copies to EPA (unless otherwise agreed by EPA), and two copies to the TCEQ, 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 Principal Settling Defendants or their contractors or agents in the previous month; (c) identify all plans, reports, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection

and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Principal Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Principal Settling Defendants shall submit these progress reports to EPA and the TCEQ by the fourteenth day of every month following the lodging of this Consent Decree until EPA notifies Principal Settling Defendants pursuant to Paragraph 52.b of Section XIV (Certification of Completion). If requested by EPA or the TCEQ, Principal Settling Defendants shall also provide briefings for EPA and the TCEQ to discuss the progress of the Work.

33. Principal Settling 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, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

34. Upon the occurrence of any event during performance of the Work that Principal Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11004, Principal Settling Defendants shall within 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 Response and Prevention Branch, Region 6, United States Environmental Protection Agency, at 866-372-7745. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

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

36. Principal Settling Defendants shall submit three copies (unless otherwise agreed by EPA) of all plans, reports, data, and other deliverables required by the SOW, 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. Principal Settling Defendants shall simultaneously submit one copy of all such plans, reports, data, and other deliverables to the TCEQ. Upon request by EPA, Principal Settling Defendants shall submit in electronic form all or any portion of any deliverables Principal Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

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

XI. EPA APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

38. Initial Submissions.

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

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

39. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 38.a.(iii) or (iv), or if required by a notice of approval upon specified conditions under Paragraph 38.a.(ii), Principal Settling Defendants shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring Principal Settling Defendants to correct the deficiencies; or (e) any combination of the foregoing.

40. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under Paragraph 38.b.(ii) or 39 due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 83. The provisions of Section XX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding Principal Settling Defendants' submissions under this Section.

41. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 38 or 39, of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) Principal Settling Defendants shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to their right to invoke the Dispute Resolution procedures set forth in Section XX (Dispute Resolution) with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 38 or 39 shall not relieve Principal Settling Defendants of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

XII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, Principal Settling Defendants, the State and EPA will notify each other, in writing, of the name, address, and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. Principal Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. Principal Settling Defendants' Project Coordinator shall not be an attorney for any Settling Defendant in this matter. The Principal Settling Defendants' 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.

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

44. EPA's Project Coordinator and Principal Settling Defendants' Project Coordinator will meet, at a minimum, on a monthly basis.

XIII. PERFORMANCE GUARANTEE

45. In order to ensure the full and final completion of the Work, Principal Settling Defendants shall establish and maintain a performance guarantee, initially in the amount of $56,400,000 (or as otherwise determined pursuant to this Section), for the benefit of EPA (hereinafter "Estimated Cost of the Work"). The performance guarantee, which must be satisfactory in form and substance to EPA, shall be in the form of one or more of the following mechanisms (provided that, if Principal Settling Defendants intend to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds, and insurance policies):

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

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (i) that has the authority to issue letters of credit and (ii) whose letter-of-credit operations are regulated and examined by a federal or state agency;

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

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

e. A demonstration by one or more Principal Settling Defendants that each such Principal Settling Defendant meets the financial test criteria of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee), provided that all other requirements of 40 C.F.R. § 264.143(f) are met to EPA's satisfaction; or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (i) a direct or indirect parent company of a Principal Settling Defendant, or (ii) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with at least one Principal Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the financial test and reporting requirements for owners and operators set forth in subparagraphs (1) through (8) of 40 C.F.R. § 264.143(f) with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder.

46. Principal Settling Defendants have selected, and EPA has found satisfactory, as an initial performance guarantee pursuant to Paragraph 45.c, a trust fund pursuant to a Trust Agreement substantially in the form attached hereto as Appendix E. Within sixty (60) days after the Effective Date, Principal Settling Defendants shall execute or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents attached hereto as Appendix E, and such performance guarantee(s) shall thereupon be fully effective. Within seventy-five (75) days of the Effective Date, Principal Settling Defendants shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Financial Management Officer, the United States, EPA, and the State in accordance with Section XXVII (Notices and Submissions).

a. The trust fund may include a segregated subaccount that is limited to funds contributed by the Cashout Settling Defendants to resolve claims under CERCLA relating to the Site and that is intended by the Principal and Cashout Settling Defendants to be treated as a Qualified Settlement Fund under the continuing jurisdiction of the Court for federal and state tax purposes in accordance with the requirements of 26 C.F.R. Section 1.468B. Alternatively, such subaccount shall not be established as a Qualified Settlement Fund under the continuing jurisdiction of the Court. Such alternative subaccounts shall take the respective forms shown on attached Appendix E.

47. If, at any time after the Effective Date and before issuance of the Certification of Completion of the Work pursuant to Paragraph 52, Principal Settling Defendants provide a

performance guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 45.e or 45.f, the relevant Principal Settling Defendants shall also comply with the other relevant requirements of 40 C.F.R. § 264.143(f) relating to these mechanisms unless otherwise provided in this Consent Decree, including but not limited to: (a) the initial submission of required financial reports and statements from the relevant entity's chief financial officer ("CFO") and independent certified public accountant ("CPA"), in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at: http://www.epa.gov/compliance/resources/policies/cleanup/superfund/fa-test-samples.pdf; (b) the annual re-submission of such reports and statements within 90 days after the close of each such entity's fiscal year; and (c) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within 90 days after the close of any fiscal year in which such entity no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include the Estimated Cost of the Work; the terms "owner" and "operator" shall be deemed to refer to each Principal Settling Defendant making a demonstration under Paragraph 45.e; and the terms "facility" and "hazardous waste facility" shall be deemed to include the Site.

48. In the event that EPA determines at any time that a performance guarantee provided by any Principal Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that any Principal Settling Defendant becomes aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, Principal Settling Defendants, within 30 days of receipt of notice of EPA's determination or, as the case may be, within 30 days of any Principal Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 45 that satisfies all requirements set forth in this Section XIII; provided, however, that if any Principal Settling Defendant cannot obtain such revised or alternative form of performance guarantee within such 30-day period, and provided further that the Principal Settling Defendant shall have commenced to obtain such revised or alternative form of performance guarantee within such 30-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for the Principal Settling Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed 45 days. On day 30, Principal Settling Defendant shall provide to EPA a status report on its efforts to obtain the revised or alternative form of guarantee. In seeking approval for a revised or alternative form of performance guarantee, Principal Settling Defendants shall follow the procedures set forth in Paragraph 50.b.(2). Principal Settling Defendants' inability to post a performance guarantee for completion of the Work shall in no way excuse performance of any other requirements of this Consent Decree, including, without limitation, the obligation of

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

49. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 103 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 45.a, 45.b, 45.c, 45.d, or 45.f, and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if (a) for any reason EPA is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or (b) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 45.e or Paragraph 45.f.(ii), Principal Settling Defendants (or in the case of Paragraph 45.f.(ii), the guarantor) shall immediately upon written demand from EPA deposit into a special account within the EPA Hazardous Substance Superfund or such other account as EPA may specify, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA. In addition, if at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless Principal Settling Defendants provide a substitute performance guarantee mechanism in accordance with this Section XIII no later than 30 days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is 30 days prior to the impending cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee. All EPA Work Takeover costs not reimbursed under this Paragraph shall be reimbursed under Section XVI (Payments for Response Costs, NRD, & NRD Assessment Costs).

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

a. Reduction of Amount of Performance Guarantee. If Principal Settling Defendants believe that the estimated cost of completing the Work has diminished below the amount set forth in Paragraph 45, Principal Settling Defendants may, no more than once during each calendar year after the first anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the performance guarantee provided pursuant to this Section so that the amount of the performance guarantee is equal to the estimated cost of completing the Work. Principal Settling Defendants shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the estimated cost of completing the Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the performance guarantee, Principal Settling Defendants shall follow the procedures set forth in Paragraph 50.b.(2) for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 50.a. If EPA decides to accept Principal Settling Defendants' proposal for a reduction in the amount of the performance guarantee, either to the amount set forth in Principal Settling Defendants' written proposal or to some other amount as selected by EPA, EPA will notify the petitioning Principal Settling Defendants of such decision in writing. Upon EPA's acceptance of a reduction in the amount of the performance guarantee, the Estimated Cost of the Work shall be deemed to be the estimated cost of completing the Work set forth in EPA's written decision. After receiving EPA's written

decision, Principal Settling Defendants may reduce the amount of the performance guarantee in accordance with and to the extent permitted by such written acceptance and shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding in accordance with Paragraph 50.b.(2). In the event of a dispute, Principal Settling Defendants may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XX (Dispute Resolution). No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 48 or 50.b.

b. Change of Form of Performance Guarantee.

(1) If, after the Effective Date, Principal Settling Defendants desire to change the form or terms of any performance guarantee(s) provided pursuant to this Section, Principal Settling Defendants may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form or terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 50.b.(2). Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion, and such decision shall not be subject to challenge by Principal Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

(2) Principal Settling Defendants shall submit a written proposal for a revised or alternative performance guarantee to EPA which shall specify, at a minimum, the estimated cost of completing the Work, the basis upon which such cost was calculated, and the proposed revised performance guarantee, including all proposed instruments or other documents required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section. Principal Settling Defendants shall submit such proposed revised or alternative performance guarantee to the EPA Financial Management Officer in accordance with Section XXVII (Notices and Submissions). EPA will notify Principal Settling Defendants in writing of its decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this Paragraph. Within ten days after receiving a written decision approving the proposed revised or alternative performance guarantee, Principal Settling Defendants shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. Within 30 days of receiving a written decision approving the proposed revised or alternative performance guarantee, Principal Settling Defendants shall submit to the EPA Financial Management Officer, the United States, EPA, and the State in accordance with Section XXVII (Notices and Submissions) copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding.

c. Release of Performance Guarantee. Principal Settling Defendants shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except

as provided in this Paragraph. If Principal Settling Defendants receive written notice from EPA in accordance with Paragraph 52 that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies Principal Settling Defendants in writing, Principal Settling Defendants may thereafter release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section. In the event of a dispute, Principal Settling Defendants may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XX (Dispute Resolution).

XIV. CERTIFICATION OF COMPLETION

51. Completion of the Remedial Action.

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

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, 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 Principal Settling Defendants in writing of the activities that must be undertaken by Principal Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require Principal Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the ROD," as that term is defined in Paragraph 14.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Principal Settling Defendants to

submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Principal Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by the State, 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 Principal Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXII (Covenants by Plaintiffs). Certification of Completion of the Remedial Action shall not affect Principal Settling Defendants' remaining obligations under this Consent Decree.

52. Completion of the Work.

a. Within 90 days after Principal Settling Defendants conclude that all phases of the Work, other than any remaining activities required under Section VII (Remedy Review), have been fully performed, Principal Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Principal Settling Defendants, EPA, and the State. If, after the pre-certification inspection, Principal Settling Defendants still believe that the Work has been fully performed, Principal Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the statement set forth in Paragraph 51.a, signed by a responsible corporate official of a Principal Settling Defendant or Principal Settling Defendants' Project Coordinator. If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Principal Settling Defendants in writing of the activities that must be undertaken by Principal Settling Defendants pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Principal Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the ROD," as that term is defined in Paragraph 14.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require Principal Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). Principal Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution).

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

XV. EMERGENCY RESPONSE

53. If any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Principal Settling Defendants shall, subject to Paragraph 54, 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, Principal Settling Defendants shall notify the EPA Response and Prevention Branch, Region 6, at 866-372-7745. Principal Settling 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 the SOW. In the event that Principal Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Principal Settling Defendants shall reimburse EPA all costs of the response action under Section XVI (Payments for Response Costs, NRD, & NRD Assessment Costs).

54. Subject to Section XXII (Covenants by Plaintiffs), nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State, (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XVI. PAYMENTS FOR RESPONSE COSTS, NRD, & NRD ASSESSMENT COSTS

55. Payment by Settling Defendants for Past Response Costs and Future Oversight Costs.

a. Within 30 days of the Effective Date, Principal Settling Defendants shall pay to EPA $900,000 in payment for Past Response Costs and Future Oversight Costs. Payment shall be made in accordance with Paragraphs 59.a and 59.c (Payment Instructions).

b. Within 30 days of the effective Date, Principal Settling Defendants, in lieu of a payment that the State owes EPA, shall pay EPA $504,277.27. (This is an amount that is due from the State to EPA pursuant to an order of the Bankruptcy Court. The State's claim against the Principal Settling Defendants has been adjusted accordingly.)

c. The total amount to be paid to EPA by Settling Defendants pursuant to this Paragraph shall be deposited by EPA into the MSC Site Special Account.

d. Within 30 days of the Effective Date, Principal Settling Defendants shall pay to the State $285,682.86 in payment for State Past Response Costs and $55,000 in payment for the State's attorneys' fees. Payment shall be made in accordance with Paragraph 59.d (Instructions for Payments to the State of Texas). TCEQ has joined the group of De Minimis Cashout Settling Defendants listed in Appendix G. In lieu of making a cash payment, TCEQ has contributed the $6,766 necessary to become a De Minimis Cashout Settling Defendant by

reducing the State's claim for State Past Response Costs by $6,766. (The payment of $285,682.86 has been adjusted to reflect an offset for both the $504,277.27 described in Subparagraph "b" above and the $6,766 payment described here.) This payment reflects the TCEQ's net claim after the recovery of response costs from other entities including certain bankruptcy estates. It also reflects estimated future recoveries, with allowance for delay and difficulty of collection. The Settling Defendants and the State hereto agree to compromise and settle their claims according to the terms of this subparagraph, regardless of whether the TCEQ's future recoveries are more than, less than, or the same as the current estimates.

56. Payments by Principal Settling Defendants for Future Response Costs Other Than Future Oversight Costs and Interim Response Costs. Principal Settling Defendants shall pay to EPA all Future Response Costs not inconsistent with the NCP other than Future Oversight Costs and Interim Response Costs.

a. On a periodic basis, EPA will send Principal Settling Defendants a bill requiring payment that includes a SCORPIOS (Superfund Cost Recovery Package Image and On-Line System) report and a DOJ case cost summary. Principal Settling Defendants shall make payments within 30 days of Principal Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 60, in accordance with Paragraphs 59.b and 59.c.

b. The total amount to be paid by Principal Settling Defendants pursuant to Subparagraph "a" of this Paragraph shall be deposited by EPA into the MSC Site Special Account.

c. Principal Settling Defendants shall pay to the State all State Future Response Costs not inconsistent with the NCP. The State will send Principal Settling Defendants a bill requiring payment, that includes direct and indirect costs incurred by the State and its contractors and documentation of such costs (including personnel labor hours and rates, indirect cost calculations, contractor invoices, and disbursement receipts over $100), on a periodic basis or as required. Principal Settling Defendants shall make all payments within 60 days of Principal Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 60. Principal Settling Defendants shall make all payments to the State required by this Paragraph in accordance with Paragraph 59.d.

57. Payments by Settling Federal Agencies for Response Costs.

a. Payment to Principal Settling Defendants. As soon as reasonably practicable after the Effective Date, by Automated Clearing House Electronic Funds Transfer in accordance with instructions provided by Principal Settling Defendants, the United States Postal Service, on its own behalf, shall pay $10.29, and the United States, on behalf of the remaining Settling Federal Agencies, shall pay $1,455,018.71, to Principal Settling Defendants in payment of Past Response Costs and Future Response Costs, and in payment of Settling Defendants' past response costs and future response costs at the Site.

b. Payment to the State. As soon as reasonably practicable after the Effective Date, the United States Postal Service, on its own behalf, shall pay $0.25 (twenty-five cents), and the United States, on behalf of the remaining Settling Federal Agencies, shall pay $34,999.75 to the State in payment of State Past Response Costs and State Future Response Costs by Wire Transfer in accordance with Paragraph 59.d, below.

c. Interest. In the event that any payment required by Paragraphs 57.a or 57.b, is not made within 120 days of the Effective Date, Interest on the unpaid balance shall be paid at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), commencing on the 121st day after the Effective Date and accruing through the date of the payment.

58. The Parties to this Consent Decree recognize and acknowledge that the payment obligations of the United States under this Consent Decree (with the exception of the obligations of the United States Postal Service) can only be paid from appropriated funds legally available for such purpose. Nothing in this Consent Decree shall be interpreted or construed as a commitment or requirement that any Settling Federal Agency obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

59. Payment Instructions for Settling Defendants.

a. Instructions for Payments of Past Response Costs and Future Oversight Costs. All payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 59.a shall be made at https://www.pay.gov to the U.S. Department of Justice account, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Southern District of Texas after the Effective Date. Any payments exceeding $9.9 million and required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph may be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, and in accordance with instructions provided to Settling Defendants by the FLU after the Effective Date. The payment instructions provided by the Financial Litigation Unit shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Bob Piniewski
Project Navigator, Ltd.
10497 Town and Country Way, Suite 830
Houston, TX 77024
Phone: 919-435-0934
Cell: 919-539-1928
Email: bobp@projectnavigator.com

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change in accordance with Section XXVII (Notices and Submissions).

b. Instructions for Future Response Costs Payments other than Future Oversight Costs and Stipulated Penalties. All payments required, elsewhere in this Consent Decree, to be made in accordance with this Paragraph 59.b shall be made by Fedwire EFT to:

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

c. Instructions for Payments. All payments of Response Costs made under Paragraph 59.a or 59.b shall reference the CDCS Number, EPA Site/Spill ID Number 06GZ and DOJ Case Number 90-11-2-07465/4. At the time of any payment required to be made in accordance with Paragraphs 59.a or 59.b, Principal Settling Defendants shall send notice that payment has been made to the United States, and to EPA, in accordance with Section XXVII (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail at 26 Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the CDCS Number, Site/Spill ID Number, and DOJ Case Number.

d. Instructions for Payments to the State of Texas. All payments required under this Consent Decree to be made to the State, except payments for NRD Assessment Costs under Paragraph 62.b, shall be made by Wire Transfer to the Comptroller of Public Accounts, State of Texas, for the Attorney General's Suspense Account, using the following instructions:

Financial Institution:	TX COMP AUSTIN
Routing Number:	114900164
Account Name:	Comptroller of Public Accounts Treasury Operations
Account Number to Credit:	463600001
Reference:	AG No. 09-3106847 (Malone Superfund Site)
Attention:	Office of the Attorney General Chief, EPD Div. (463-2012)
Contact:	Abel Rosas, Fin. Rptg (475-4380)

At the time of payment, the payor shall likewise send a copy of the Wire Transfer authorization form and transaction record, together with a transmittal letter, in accordance with Section XXVII of this Decree (Notices and Submissions), and shall send a copy by email to Thomas.Edwards@oag.state.tx.us. The transmittal letter shall state that the payment is made pursuant to this Consent Decree, and shall reference the civil action number of this case and AG No. 093106847.

60. Principal Settling Defendants may contest any Future Response Costs or State Future Response Costs billed under Paragraph 56 if they determine that EPA or the State has made a mathematical error or included a cost item that is not within the definition of Future Response Costs or State Future Response Costs, or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within 60 days of receipt of the bill and must be

sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVII (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs or State Future Response Costs and the basis for objection. In the event of an objection, Principal Settling Defendants shall pay all uncontested Future Response Costs to the United States and all uncontested State Future Response Costs to the State within 60 days of Principal Settling Defendants' receipt of the bill requiring payment. Simultaneously, Principal Settling Defendants shall establish an interest-bearing escrow account in a federally insured bank duly chartered in the State of Texas and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs or State Future Response Costs. Principal Settling Defendants shall send to the United States, as provided in Section XXVII (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Future Response Costs or State Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Principal Settling Defendants shall initiate the Dispute Resolution procedures in Section XX (Dispute Resolution). If the United States or the State prevails in the dispute, Principal Settling Defendants shall pay the sums due (with accrued interest) to the United States or the State, as applicable, within five days of the resolution of the dispute. If Principal Settling Defendants prevail concerning any aspect of the contested costs, Principal Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States or the State, as applicable, within five days of the resolution of the dispute. Any balance of the escrow account shall be disbursed to Principal Settling Defendants. All payments to the United States under this Paragraph shall be made in accordance with Paragraphs 59.b and 59.c (Payment Instructions). All payments to the State under this Paragraph shall be made in accordance with Paragraph 59.d (Instructions for Payments to the State of Texas). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Principal Settling Defendants' obligation to reimburse the United States for Future Response Costs and the State for State Future Response Costs.

61. Interest. In the event that any payment for Past Response Costs, Future Oversight Costs, State Past Response Costs, State Future Response Costs, and the State's attorneys fees under this Section is not made by the date required, Principal Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response Costs, Future Oversight Costs, State Past Response Costs, and the State's attorneys fees under this Paragraph shall begin to accrue on the Effective Date. The Interest on all subsequent Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Principal Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Principal Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 84.

62. Payments for NRD; Use of Such Funds.

Within 30 days of the Effective Date, Principal Settling Defendants shall pay a total of $3,035,873 for Natural Resource Damages, as provided in Paragraphs 62.a and 62.b. As soon as reasonably practicable after the Effective Date, the Settling Federal Agencies shall pay $73,127 for Natural Resource Damages, as provided in Paragraph 62.c . The total to be paid for Natural Resource Damages is $3,109,000.

a. Payments for Restoration Costs, Future NRD Assessment Costs, and the United States' Past NRD Assessment Costs.

(1) Within 30 days of the Effective Date, Principal Settling Defendants shall pay a total of $2,908,753 to the United States for the Texas and federal Trustees' Restoration Costs, Future NRD Assessment Costs incurred by all Trustees, and Past NRD Assessment Costs incurred by the United States. Payment shall be made at https://www.pay.gov to the U.S. Department of Justice account, in accordance with instructions provided to Principal Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Texas after the Effective Date. The payment instructions provided by the Financial Litigation Unit shall include a Consolidated Debt Collection System ("CDCS") number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU shall provide the payment instructions to:

Bob Piniewski
Project Navigator, Ltd.
10497 Town and Country Way, Suite 830
Houston, TX 77024
Phone: 919-435-0934
Cell: 919-539-1928
Email: bobp@projectnavigator.com

on behalf of Principal Settling Defendants. Principal Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change in accordance with Section XXVII (Notices and Submissions).

(2) Of the $2,981,880 total amount to be paid by Principal Settling Defendants and Settling Federal Agencies pursuant to this Subparagraph "a" and Subparagraph "c," respectively:

(a) $2,878,962 shall be deposited in a segregated sub-account within the United States Department of the Interior's ("DOI's") Natural Resource Damage Assessment and Restoration Fund ("NRDAR Fund") to be used jointly by the Trustees to pay for Restoration Costs and Future NRD Assessment Costs in accordance with Subparagraph "d," below.

(b) $27,327 shall be deposited in the NRDAR Fund, to be applied toward Past NRD Assessment Costs incurred by DOI.

(c) $75,591 shall be deposited in NOAA's Damage Assessment and Restoration Revolving Fund, to be applied toward Past NRD Assessment Costs incurred by NOAA.

Upon making the payment to the United States required by this Paragraph, Principal Settling Defendants shall send written notice that the payment has been made to the following:

Department of the Interior
NBC/Division of Financial Management Services
Branch of Accounting Operations
Mail Stop D-2777
7401 W. Mansfield Ave.
Lakewood, CO 80235

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-2-07465/2

and

Richard Seiler
TCEQ, MC133
P.O. Box 13087
Austin, Texas 78711-3087
Re: Malone NRDA

b. Payments for Past NRD Assessment Costs Incurred by the State.

(1) Within 30 days of the Effective Date, Principal Settling Defendants shall pay a total of $127,120 for the Texas Trustees' Past NRD Assessment Costs in accordance with the following instructions:

(a) Principal Settling Defendants shall pay by wire transfer in accordance with Paragraph 59.d, or mail a certified check in the amount of $127,120, payable to the "State of Texas" and referencing "Malone NRD" and AG# 093138295." Of the $127,120:

– $80,628 shall be allocated to TCEQ;

– $29,773 shall be allocated to TPWD; and

– $16,719 shall be allocated to the TGLO.

The certified check in the amount of $127,120 to the State of Texas for Past NRD Assessment Costs shall be mailed to:

Chief
Environmental Protection Division

Texas Attorney General's Office (066)
P.O. Box 12548
Austin, Texas 78711-2548.

c. Payments by Settling Federal Agencies. As soon as reasonably practicable after the Effective Date, by Automated Clearing House Electronic Funds Transfer in accordance with instructions provided by the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Texas, the United States Postal Service, on it own behalf, shall pay $0.52 (fifty-two cents), and the United States, on behalf of the remaining Settling Federal Agencies, shall pay $73,126.48, to the United States Attorney's Office in payment of Natural Resource Damages (Restoration Costs and Past and Future NRD Assessment Costs incurred and to be incurred by the United States and the State). The $73,127 shall be deposited in the same segregated sub-account within DOI's NRDAR Fund described in Subparagraph "a.(2)(a)," above, to be used jointly by the Trustees in accordance with Subparagraph "d," below.

d. Use and Management of Funds in the NRDAR Segregated Sub-Account. All funds segregated in the sub-account of the NRDAR Fund pursuant to Subparagraph "a.(2)(a)," above (the "segregated sub-account") (to which the Principal Settling Defendants are to pay $2,878,962 and the Settling Federal Agencies are to pay $73,127), shall be held by the Department of the Interior on behalf of the Trustees and used only to reimburse the Trustees for Future NRD Assessment Costs and to restore, replace, rehabilitate, or acquire the equivalent of any natural resources or services injured, lost, or destroyed as a result of the release of hazardous substances at or from the Site (including the design, implementation, permitting (as necessary), monitoring, and oversight of restoration projects and compliance with the requirements of the law to conduct a restoration planning and implementation process). The Department of the Interior shall not make any charge against the segregated sub-account for any investment or management services provided and shall hold all funds in the segregated sub-account, including return on investments or accrued interest, subject to the provisions of this Consent Decree.

e. Decisions regarding the use of funds in the segregated sub-account shall be made jointly by the Trustees. The Natural Resource Trustees commit to the expenditure of all funds in the segregated sub-account (not otherwise used to reimburse the Trustees for Future Assessment Costs) for the design, implementation, permitting (as necessary), monitoring, and oversight of restoration projects and for the costs of complying with the requirements of the law to conduct a restoration planning and implementation process. The allocation of funds for specific projects or categories of projects will be contained in a Restoration Plan prepared and implemented jointly by the Trustees, for which public notice, opportunity for public input, and consideration of public comment will be provided. The Trustees jointly retain the ultimate authority and responsibility to use the funds in the segregated sub-account to restore natural resources in accordance with applicable law, this Consent Decree, and any memorandum or other agreement among them. No Settling Defendant shall be entitled to dispute, pursuant to this Consent Decree or in any other forum or proceeding, any decision relating to the use of funds in the segregated sub-account.

f. If any payment required by this Paragraph is not made within 30 days of the Effective date, Principal Settling Defendants shall pay a stipulated penalty of $1,000 per day for the first through the 30th day of noncompliance and $2,000 per day for the 31st and subsequent

days of noncompliance. Stipulated penalties shall be paid 50% to the State and 50% to the United States, in accordance with the payment instructions in this Paragraph, Subparagraphs "a" and "b."

XVII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

63. Creation of MSC Site Disbursement Special Account and Agreement to Disburse Funds to Principal Settling Defendants. Within 30 days after the Effective Date, EPA shall establish the MSC Site Disbursement Special Account and shall transfer $5,800,000 from the MSC Site Special Account to the MSC Site Disbursement Special Account. Subject to the terms and conditions set forth in this Section, EPA agrees to make funds in the MSC Site Disbursement Special Account, including the appropriate share of the Interest Earned on the funds in the MSC Site Disbursement Special Account, available for disbursement to Principal Settling Defendants as partial reimbursement for performance of the Work under this Consent Decree. EPA shall disburse funds from the MSC Site Disbursement Special Account to Principal Settling Defendants in accordance with the procedures and milestones for phased disbursement set forth in this Section.

64. Timing, Amount, and Method of Disbursing Funds From the MSC Site Disbursement Special Account. Within 120 days of EPA's receipt of Principal Settling Defendants' Cost Summary and Certification, as defined by Paragraph 65.b, or if EPA has requested additional information under Paragraph 65.b or a revised Cost Summary and Certification under Paragraph 65.c, within 120 days of receipt of the additional information or revised Cost Summary and Certification, and subject to the conditions set forth in this Section, EPA shall disburse the funds from the MSC Site Disbursement Special Account at the completion of the following milestones, and in the amounts set forth below:

Milestone	Disbursement of Funds
1. Completion of All Activities in Phase One of the Work	$700,00 from the MSC Site Disbursement Special Account
2. Completion of All Activities in Phase Two of the Work	$2,000,000 from the MSC Site Disbursement Special Account
3. EPA Certification of Completion of the Remedial Action	$1,800,000 from the MSC Site Disbursement Special Account, plus 71% of the interest accrued on the MSC Site Disbursement Special Account. If, however, the Principal Settling Defendants incur costs greater than $56,400,000 on the Work, EPA shall disburse from the MSC Site Disbursement Special Account to the Principal Settling Defendants (i) 50% of those costs incurred by Principal Settling Defendants that exceed $56,400,000 up to an additional disbursement of $1,300,000, and (ii) the proportionate share of the accrued interest remaining in the Account after the payout of the 71% of the accrued interest.[1] In no event shall EPA disburse more than $5,800,000, plus interest, to the Principal Settling Defendants.

EPA shall disburse the funds from the MSC Site Disbursement Special Account to Principal Settling Defendants pursuant to instructions for electronic funds transfer, which the Principal Settling Defendants shall provide to EPA no later than the day the Principal Settling Defendants submit their Cost Summary and Certification to EPA.

65. Requests for Disbursement of Special Account Funds.

a. Within 120 days of issuance of EPA's written confirmation that a milestone of the Work, as defined in Paragraph 64, has been satisfactorily completed, Principal Settling Defendants shall submit to EPA a Cost Summary and Certification, as defined in Paragraph 65.b, covering the Work performed pursuant to this Consent Decree up to the date of completion of that milestone. Principal Settling Defendants shall not include in any submission costs included in a previous Cost Summary and Certification following completion of an earlier milestone of the Work if those costs have been previously sought or reimbursed pursuant to Paragraph 64.

b. Each Cost Summary and Certification shall include a complete and accurate written cost summary and certification of the necessary costs incurred and paid by Principal Settling Defendants for the Work covered by the particular submission, excluding costs not eligible for disbursement under Paragraph 66. Each Cost Summary and Certification shall contain the following statement signed by the Chief Financial Officer of a Principal Settling Defendant,

[1] For example, if the Principal Settling Defendants ("PSDs") incur costs of $58,720,000 on the Work, that would be $2,320,000 more than $56,400,000. In addition to the payment of $1,800,000 triggered by Milestone Number 3, the PSDs would also receive $1,160,000 (½ of the $2,320,000). The interest payment on the $1,160,000 would be 20% of the remaining interest (1,160,000 ÷ 5,800,000 = 0.2).

an Independent Certified Public Accountant, or another independent person acceptable to EPA (in EPA's unreviewable discretion):

> To the best of my knowledge, after thorough investigation and review of Principal Settling Defendants' documentation of costs incurred and paid for Work performed pursuant to this Consent Decree [**insert, as appropriate:** "up to the date of completion of milestone 1," "between the date of completion of milestone 1 and the date of completion of milestone 2," "between the date of completion of milestone 2 and the date of completion of milestone 3."] I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

The Chief Financial Officer of a Principal Settling Defendant, Independent Certified Public Accountant, or other independent person acceptable to EPA (in EPA's unreviewable discretion) 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, Principal Settling 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 error, costs excluded under Paragraph 66, costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, it will notify Principal Settling Defendants and provide them an opportunity to cure the deficiency by submitting a revised Cost Summary and Certification. If Principal Settling Defendants fail to cure the deficiency within 30 days after being notified of, and given the opportunity to cure, the deficiency, EPA will recalculate Principal Settling Defendants' costs eligible for disbursement for that submission and disburse the corrected amount to Principal Settling Defendants in accordance with the procedures in Paragraph 64 of this Section. Principal Settling Defendants may dispute EPA's recalculation under this Paragraph pursuant to Section XX (Dispute Resolution). In no event shall Principal Settling Defendants be disbursed funds from the MSC Site Disbursement Special Account in excess of amounts properly documented in a Cost Summary and Certification accepted or modified by EPA.

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

by Principal Settling Defendants prior to the date of lodging (except that cemetery relocation costs incurred prior to the date of lodging are not excluded from disbursement); or (h) any costs incurred by Principal Settling Defendants pursuant to Section XX (Dispute Resolution).

67. Termination of Disbursements from the Special Account. EPA's obligation to disburse funds from the MSC Site Disbursement Special Account under this Consent Decree shall terminate upon EPA's determination that Principal Settling Defendants: (a) have knowingly submitted a materially false or misleading Cost Summary and Certification; (b) have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct the materially inaccurate or incomplete Cost Summary and Certification within 30 days after being notified of, and given the opportunity to cure, the deficiency; or (c) failed to submit a Cost Summary and Certification as required by Paragraph 65 within 120 days (or such longer period as EPA agrees) after being notified that EPA intends to terminate its obligation to make disbursements pursuant to this Section because of Principal Settling Defendants' failure to submit the Cost Summary and Certification as required by Paragraph 65. EPA's obligation to disburse funds from the MSC Site Disbursement Special Account shall also terminate upon EPA's assumption of performance of any portion of the Work pursuant to Paragraph 103, when such assumption of performance of the Work is not challenged by Principal Settling Defendants or, if challenged, is upheld under Section XX (Dispute Resolution). Principal Settling Defendants may dispute EPA's termination of special account disbursements under Section XX (Dispute Resolution).

68. Recapture of Special Account Disbursements. Upon termination of disbursements from the MSC Site Disbursement Special Account under Paragraph 67, if EPA has previously disbursed funds from the MSC Site Disbursement Special Account for activities specifically related to the reason for termination, e.g., discovery of a materially false or misleading submission after disbursement of funds based on that submission, EPA shall submit a bill to Principal Settling Defendants for those amounts already disbursed from the MSC 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 Principal Settling Defendants. Within 30 days of receipt of EPA's bill, Principal Settling Defendants shall reimburse the Hazardous Substance Superfund for the total amount billed. Payment shall be made in accordance with Paragraphs 59.b and 59.c. Upon receipt of payment, EPA may deposit all or any portion thereof in the MSC Site Special Account, the MSC 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 Principal Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum. Principal Settling Defendants may dispute EPA's determination as to recapture of funds pursuant to Section XX (Dispute Resolution).

69. Balance of Special Account Funds. After EPA issues its written Certification of Completion of the Remedial Action pursuant to this Consent Decree, and after EPA completes all disbursement to Principal Settling Defendants in accordance with this Section, if any funds remain in the MSC Site Disbursement Special Account, EPA may transfer such funds to the MSC Site Special Account or to the Hazardous Substance Superfund. Any transfer of funds to the MSC Site Special Account or the Hazardous Substance Superfund shall not be subject to challenge by

Principal Settling Defendants pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

XVIII. INDEMNIFICATION AND INSURANCE

70. Principal Settling Defendants' Indemnification of the United States and the State.

a. The United States and the State do not assume any liability by entering into this Consent Decree or by virtue of any designation of Principal Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Principal Settling Defendants shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Principal Settling 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 Principal Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, Principal Settling Defendants agree to pay the United States and the State all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Principal Settling 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. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of Principal Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Principal Settling Defendants nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give Principal Settling Defendants notice of any claim for which the United States or the State plans to seek indemnification pursuant to Paragraph 70, and shall consult with Principal Settling Defendants prior to settling such claim.

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

72. No later than 15 days before commencing any on-Site Work, Principal Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 51.b of Section XIV (Certification of Completion) commercial general liability insurance with limits of $5 million dollars, for any one occurrence, and automobile liability insurance with limits of $2 million dollars, for any one

occurrence, naming the United States and the State as additional insureds with respect to all liability arising out of the activities performed by or on behalf of Principal Settling Defendants pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, Principal Settling 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 Principal Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Principal Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. Principal Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Principal Settling Defendants demonstrate by evidence satisfactory to EPA and the State 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, Principal Settling Defendants need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XIX. FORCE MAJEURE

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

74. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which Principal Settling Defendants intend or may intend to assert a claim of force majeure, Principal Settling 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 Superfund Division, EPA Region 6, within 48 hours of when Principal Settling Defendants first knew that the event might cause a delay. Within five days thereafter, Principal Settling Defendants shall provide in writing to EPA and the State 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; Principal Settling Defendants' rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Principal Settling Defendants, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Principal Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Principal Settling Defendants shall be deemed to know of any circumstance of which Principal Settling Defendants, any entity controlled by Principal Settling Defendants, or Principal Settling Defendants' contractors knew or

should have known. Failure to comply with the above requirements regarding an event shall preclude Principal Settling Defendants from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 73 and whether Principal Settling Defendants have exercised their best efforts under Paragraph 73, EPA may, in its unreviewable discretion, excuse in writing Principal Settling Defendants' failure to submit timely notices under this Paragraph.

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

76. If Principal Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Principal Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Principal Settling Defendants complied with the requirements of Paragraphs 73 and 74. If Principal Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Principal Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XX. DISPUTE RESOLUTION

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

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

79. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be

considered binding unless, within 14 days after the conclusion of the informal negotiation period, Principal Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States and the State 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 Principal Settling Defendants. The Statement of Position shall specify Principal Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 80 or Paragraph 81.

b. Within 20 days after receipt of Principal Settling Defendants' Statement of Position, EPA will serve on Principal Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 80 or 81. Within ten days after receipt of EPA's Statement of Position, Principal Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Principal Settling Defendants as to whether dispute resolution should proceed under Paragraph 80 or 81, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if Principal Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 80 and 81.

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

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

b. The Director of the Superfund Division, EPA Region 6, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 80.a. This decision shall be binding upon Principal Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraphs 80.c and 80.d.

c. Any administrative decision made by EPA pursuant to Paragraph 80.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Principal Settling Defendants with the Court and served on all Parties within fourteen 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 Principal Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Principal Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 80.a.

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

a. Following receipt of Principal Settling Defendants' Statement of Position submitted pursuant to Paragraph 79, the Director of the Superfund Division, EPA Region 6, will issue a final decision resolving the dispute. The Superfund Division Director's decision shall be binding on Principal Settling Defendants unless, within fourteen (14) days of receipt of the decision, Principal Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Principal Settling Defendants' motion.

b. Notwithstanding Paragraph N (regarding CERCLA Section 113(j) Record Review of ROD and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

82. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of Principal Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 90. 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 Principal Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXI (Stipulated Penalties).

XXI. STIPULATED PENALTIES

83. With the exception of noncompliance for which a stipulated penalty is due under Paragraph 62 (Payments for NRD), Principal Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 84 and 85 to the United States for failure to comply with the requirements of this Consent Decree, unless excused under Section XIX (Force Majeure). "Compliance" by Principal Settling Defendants shall include completion of all payments and activities required under this Consent Decree, or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans, reports, or other deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

84. Stipulated Penalty Amounts - Other Than Monthly Progress Reports.

a. The following stipulated penalties shall accrue per violation per day for each failure to complete a deliverable in a timely manner or produce a deliverable of acceptable quality, or for any other non-compliance with this Consent Decree with the exception of monthly progress reports as described in Paragraph 85:

Penalty Per Violation Per Day	Period of Noncompliance
$1000	1st through 14th day
$2000	15th through 30th day
$4000	31st day and beyond

85. Stipulated Penalty Amounts - Monthly Progress Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate monthly progress reports pursuant to Paragraph 32:

Penalty Per Violation Per Day	Period of Noncompliance
$800	1st through 14th day
$1000	15th through 30th day
$2000	31st day and beyond

86. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 103 (Work Takeover), Principal Settling Defendants shall be liable for a stipulated penalty in the amount of $100,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 49 (Funding for Work Takeover) and 103 (Work Takeover).

87. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Principal Settling Defendants of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 6, under Paragraph 80.b or 81.a of Section XX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Principal Settling Defendants' Reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

88. Following EPA's determination that Principal Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Principal Settling Defendants written notification of the same and describe the noncompliance. EPA may send Principal

Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Principal Settling Defendants of a violation.

89. All penalties accruing under this Section shall be due and payable to the United States within 30 days of Principal Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Principal Settling Defendants invoke the Dispute Resolution procedures under Section XX (Dispute Resolution) within the 30-day period. All payments to the United States under this Section shall indicate that the payment is for stipulated penalties, and shall be made in accordance with Paragraphs 59.b and 59.c (Payment Instructions).

90. Penalties shall continue to accrue as provided in Paragraph 87 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to EPA within 60 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, Principal Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Paragraph 90.c;

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

91. If Principal Settling Defendants fail to pay stipulated penalties when due, Principal Settling Defendants shall pay Interest on the unpaid stipulated penalties as follows: (a) if Principal Settling Defendants have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 90 until the date of payment; and (b) if Principal Settling Defendants fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 89 until the date of payment. If Principal Settling Defendants fail to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

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

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

not seek civil penalties pursuant to Section 122(*l*) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

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

XXII. COVENANTS BY PLAINTIFFS

95. a. Covenants for Principal Settling Defendants, Major Cashout Settling Defendants, and/or Owner Settling Defendant by United States. In consideration of the actions that will be performed and the payments that will be made by or on behalf of Principal Settling Defendants, Major Cashout Settling Defendants, and/or Owner Settling Defendant under this Consent Decree, and except as specifically provided in Paragraphs 97, 98, 100, and 102 the United States covenants not to sue or to take administrative action against Principal Settling Defendants, Major Cashout Settling Defendants, and/or Owner Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, Sections 311(f)(4) and (5) of the FWPCA, and Section 7003 of RCRA relating to the Site. Except with respect to future liability, these covenants shall take effect upon the receipt by EPA of the payments required by Paragraph 55.a (Payments for Past Response Costs) and any Interest or stipulated penalties due thereon under Paragraph 61 (Interest) or Section XXI (Stipulated Penalties), and the receipt by NOAA and the FWS of the NRD payments required by, and any stipulated penalties due under, Paragraph 62. With respect to future liability, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 51.b of Section XIV (Certification of Completion). These covenants are conditioned upon the satisfactory performance by Principal Settling Defendants, Major Cashout Settling Defendants, and Owner Settling Defendant of their obligations under this Consent Decree. These covenants extend only to Principal Settling Defendants, Major Cashout Settling Defendants, and Owner Settling Defendant and do not extend to any other person.

b. Covenants for Principal Settling Defendants, Major Cashout Settling Defendants, and/or Owner Settling Defendant by the State. In consideration of the actions that will be performed and the payments that will be made by or on behalf of Principal Settling Defendants, Major Cashout Settling Defendants, and/or Owner Settling Defendant under this Consent Decree, and except as specifically provided in Paragraphs 97, 98, 100, and 102 the State covenants not to sue or to take administrative action relating to the Site against Principal Settling Defendants, Major Cashout Settling Defendants, or Owner Settling Defendant pursuant to Section 107(a) of CERCLA; Sections 311(f)(4) and (5) of the FWPCA; Section 7002 of RCRA; subchapters F–L of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code §§ 361.181–361.345; Texas Water Code §§ 26.261–.267; or state common law. Except with respect to future liability, these covenants shall take effect upon the receipt by the State of the payments required by Paragraph 55.d (Payment by Settling Defendants for Past Response Costs) any Interest or stipulated penalties due thereon under Paragraph 61 (Interest) or Section XXI (Stipulated Penalties), and the receipt by the Texas Trustees of the NRD payments required by, and any stipulated penalties due under, Paragraph 62. With respect to future liability, these covenants shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 51.b of Section XIV (Certification of Completion). These covenants are conditioned upon the satisfactory performance by Principal Settling Defendants, Major Cashout Settling

Defendants, and Owner Settling Defendant of their obligations under this Consent Decree. These covenants extend only to Principal Settling Defendants, Major Cashout Settling Defendants, and Owner Settling Defendant and do not extend to any other person.

c. Covenant for De Minimis Cashout Settling Defendants by United States. In consideration of the payments that will be made by or on behalf of De Minimis Cashout Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraph 101 (Reservation of Rights by United States and State As to De Minimis Cashout Settling Defendants), the United States covenants not to sue or take administrative action against De Minimis Cashout Settling Defendants pursuant to Sections 106 or 107 of CERCLA, Sections 311(f)(4) and (5) of the FWPCA, and Section 7003 of RCRA relating to the Site. This covenant not to sue shall take effect upon receipt of the payment required by Section XVI (Payments for Response Costs, NRD, & NRD Assessment Costs). With respect to each De Minimis Cashout Settling Defendant, individually, this covenant not to sue is conditioned upon:

(i) the satisfactory performance by De Minimis Cashout Settling Defendant of all applicable obligations under this Consent Decree; and

(ii) the accuracy of the information obtained by EPA relating to De Minimis Cashout Settling Defendant's involvement with the Site. In addition, if information is later obtained that indicates that a De Minimis Cashout Settling Defendant contributed 0.6% or more of the total volume of the waste sent to the Site, these covenants not to sue shall no longer be in effect. This covenant not to sue extends only to De Minimis Cashout Settling Defendants and does not extend to any other person.

d. Covenant for De Minimis Cashout Settling Defendants by the State. In consideration of the payments that will be made by or on behalf of De Minimis Cashout Settling Defendants under this Consent Decree, and except as specifically provided in Paragraph 101 (Reservation of Rights by United States and State As to De Minimis Cashout Settling Defendants), the State covenants not to sue or to take administrative action relating to the Site against De Minimis Cashout Settling Defendants pursuant to Section 107(a) of CERCLA; Sections 311(f)(4) and (5) of the FWPCA; Section 7002 of RCRA; subchapters F–L of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code §§ 361.181–361.345; Texas Water Code §§ 26.261–.267; or state common law. This covenant not to sue shall take effect upon receipt of the payment required by Section XVI (Payments for Response Costs, NRD, & NRD Assessment Costs). With respect to each De Minimis Cashout Settling Defendant, individually, this covenant not to sue is conditioned upon:

(i) the satisfactory performance by De Minimis Cashout Settling Defendant of all applicable obligations under this Consent Decree; and

(ii) the accuracy of the information obtained by the State relating to De Minimis Cashout Settling Defendant's involvement with the Site. In addition, if information is later obtained that indicates that a De Minimis Cashout Settling Defendant contributed 0.6% or more of the total volume of the waste sent to the Site, these covenants not to sue shall no longer be in effect. This covenant not to sue extends only to De Minimis Cashout Settling Defendants and does not extend to any other person.

96. Covenant for Settling Federal Agencies.

a. Covenant by EPA. In consideration of the payments that will be made by the United States Postal Service and the United States on behalf of Settling Federal Agencies under this Consent Decree, and except as specifically provided in Paragraphs 97, 98, and 100, EPA covenants not to take administrative action against Settling Federal Agencies pursuant to Sections 106 and 107(a) of CERCLA or Section 7003 of RCRA relating to the Site. Except with respect to future liability, EPA's covenant shall take effect upon the issuance of the payment required by Paragraph 57.a (Payments by Settling Federal Agencies – Payment to Principal Settling Defendants) and any Interest due thereon under Paragraph 57. With respect to future liability, EPA's covenant shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 51.b of Section XIV (Certification of Completion). EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. EPA's covenant extends only to Settling Federal Agencies and does not extend to any other person.

b. Covenant by the State. In consideration of the payments that will be made by the United States Postal Service and the United States on behalf of Settling Federal Agencies under this Consent Decree, and except as specifically provided in Paragraphs 97, 98, 100, and 102 the State covenants not to sue or take administrative action relating to the Site against the Settling Federal Agencies pursuant to Section 107(a) of CERCLA; Sections 311(f)(4) and (5) of the FWPCA; Section 7002 of RCRA; subchapters F–L of the Texas Solid Waste Disposal Act, Tex. Health & Safety Code §§ 361.181–361.345; Texas Water Code §§ 26.261–.267; or state common law. Except with respect to future liability, the State's covenant shall take effect upon the receipt by the State of the payment required by Paragraph 57.b (Payments by Settling Federal Agencies – Payment to the State) and any Interest due thereon under Paragraph 57, and the receipt by the Unites States Attorney's Office of the payment required by Paragraph 62.c (Payments for NRD – Payments by Settling Federal Agencies). With respect to future liability, the State's covenant shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 51.b of Section XIV (Certification of Completion). The State's covenant is conditioned upon the satisfactory performance by Settling Federal Agencies of their obligations under this Consent Decree. The State's covenant extends only to Settling Federal Agencies and does not extend to any other person.

97. Pre-certification Reservations.

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

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

98. Post-certification Reservations.

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

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

99. For purposes of Paragraph 97, the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the ROD was signed and set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision. For purposes of Paragraph 98, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

100. General Reservations of Rights. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Principal Settling Defendants, Owner Settling Defendant, and Major Cashout Settling Defendants – and EPA, the Trustees, and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies – with respect to all matters not expressly included within Plaintiffs' covenants. Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Principal Settling Defendants, Owner Settling Defendant, and Major Cashout Settling Defendants – and EPA, the Trustees, and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Federal Agencies – with respect to:

a. claims based on a failure by Principal Settling Defendants, Owner Settling Defendant, Major Cashout Settling Defendants, or Settling Federal Agencies to meet a requirement of this Consent Decree;

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

c. liability based on the ownership or operation of the Site by Principal Settling Defendants or Major Cashout Settling Defendants when such ownership or operation commences after signature of this Consent Decree (the ownership of the Site by the Owner Settling Defendant and the "control" of the Site by the Principal Settling Defendants referenced in Paragraph 26 commenced before signature of this Consent Decree);

d. liability based on Principal Settling Defendants', Major Cashout Settling Defendants', or Settling Federal Agencies' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree;

e. criminal liability;

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

g. liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, but that cannot be required pursuant to Paragraph 14 (Modification of SOW or Related Work Plans); and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry regarding the Site.

101. Reservation of Rights by United States and State As to De Minimis Cashout Settling Defendants. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against the De Minimis Cashout Settling Defendants with respect to all matters not expressly included within the Covenants for De Minimis Cashout Settling Defendants in Paragraphs 95.c and 95.d. Notwithstanding any other provisions of this Consent Decree, the United States and the State reserve all rights against each De Minimis Cashout Settling Defendant with respect to:

a. claims based on a failure by De Minimis Cashout Settling 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 on the ownership or operation of the Site by De Minimis Cashout Settling Defendants when such ownership or operation commences after signature of this Consent Decree;

d. liability based on De Minimis Cashout Settling 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;

e. criminal liability; or

f. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry regarding the Site.

102. Special Reservation (Re-Opener) of the United States and the Texas Trustees Regarding Natural Resource Damages. Notwithstanding any other provision of this Consent Decree, the United States and the Texas Trustees each reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against Principal Settling Defendants and Major Cashout Settling Defendants in this action or in a new action – and each Trustee reserves, and this Consent Decree is without prejudice to, the right to institute proceedings against Settling Federal Agencies in this action or in a new action – for Natural Resource Damages if:

(i) conditions at the Site, unknown to the Trustees as of the date of the lodging of this Consent Decree, are discovered, or

(ii) information regarding the Site, unknown to the Trustees as of the date of the lodging of this Consent Decree, is received,

and the previously unknown conditions or information, together with any other relevant information, indicates that injuries to natural resources due to releases at or from the Site are of a type or future persistence that was unknown to the Trustees as of the date of the lodging of this Consent Decree. For purposes of this Paragraph, information and conditions known to the Trustees shall consist of any information related to the Site in the files of, or otherwise in the possession of, any one of the individual Trustees or EPA.

103. Work Takeover.

a. In the event EPA determines that Principal Settling Defendants have (1) ceased implementation of any portion of the Work, or (2) are seriously or repeatedly deficient or late in their performance of the Work, or (3) are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Principal Settling Defendants. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Principal Settling Defendants a period of thirty (30) days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the thirty-day notice period specified in Paragraph 103.a, Principal Settling Defendants have not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify Principal Settling Defendants in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph 103.b. Funding of Work Takeover costs is addressed under Paragraph 49.

c. Principal Settling Defendants may invoke the procedures set forth in Paragraph 80 (Record Review), to dispute EPA's implementation of a Work Takeover under Paragraph 103.b. However, notwithstanding Principal Settling Defendants' invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 103.b until the earlier of (1) the date that Principal Settling Defendants remedy, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 80 (Record Review) requiring EPA to terminate such Work Takeover.

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

XXIII. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCIES

105. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 108, Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States or the State with respect to the Site and this Consent Decree, including, but not limited to:

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

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

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Texas 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;

d. any direct or indirect claim for disbursement from the MSC Site Special Account or MSC Site Disbursement Special Account, except as provided in Section XVII (Disbursement of Special Account Funds); or

e. any claim that the State's actions in this case have been frivolous, unreasonable, or without foundation, within the meaning of Tex. Health & Safety Code

§ 361.342, or that its pleadings have been groundless, brought in bad faith, brought for the purpose of harassment, fictitious, or false.

106. Covenant by Settling Federal Agencies. Settling Federal Agencies agree not to assert any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, or 113, or any other provision of law with respect to the Site and this Consent Decree. This covenant does not preclude demand for reimbursement from the Superfund of costs incurred by a Settling Federal Agency in the performance of its duties (other than pursuant to this Consent Decree) as lead or support agency under the National Contingency Plan (40 C.F.R. Part 300).

107. Except as provided in Paragraph 116 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section XXII (Covenants by Plaintiffs), other than in Paragraphs 100.a and 101.a (claims for failure to meet a requirement of the Decree), 100.e and 101.e (criminal liability), and 100.f (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

108. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendants' plans, reports, other deliverables or activities. Settling Defendants also reserve, and this Consent Decree is without prejudice to, contribution claims against Settling Federal Agencies in the event any claim is asserted by the United States or the State against Settling Defendants pursuant to any of the reservations in Section XXII (Covenants by Plaintiffs) other than in Paragraphs 100.a (claims for failure to meet a requirement of the Decree), 100.e (criminal liability), and 100.f (violations of federal/state law during or after implementation of the Work), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

109. 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).

110. Claims Against *De Minimis* and Ability-to-Pay Parties. Settling Defendants agree not to assert any claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they

may have for all matters relating to the Site against any person that has entered or in the future enters into a final CERCLA Section 122(g) *de minimis* settlement, or a final settlement based on limited ability to pay, with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

111. Claims Against *De Micromis* Parties. Settling Defendants agree not to assert any claims or causes of action and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if the materials contributed by such person to the Site containing hazardous substances did not exceed 0.002% of the total volume of waste at the Site. The waiver in this Paragraph shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person meeting the criteria in this Paragraph if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

XXIV. EFFECT OF SETTLEMENT; CONTRIBUTION

112. Except as provided in Paragraph 110 (Claims Against *De Minimis* and Ability-to-Pay Parties) and Paragraph 111 (Claims Against De Micromis Parties), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Paragraph 110 (Claims Against *De Minimis* and Ability-to-Pay Parties) and Paragraph 111 (Claims Against De Micromis Parties), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional Natural Resource Damages, response costs, or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

113. a. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that each Principal Settling Defendant, the Owner Settling Defendant, each Cashout Settling Defendant, and each Settling Federal Agency is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are (i) Natural Resource Damages, and (ii) all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person; provided, however, that if the United States exercises rights against Settling Defendants (or if EPA or the State assert rights against Settling Federal Agencies) under the reservations in Section XXII (Covenants by Plaintiffs), other than in Paragraphs 100.a (claims for failure to meet a requirement of the Decree), 100.e (criminal liability), or 100.f (violations of federal/state law during or after

implementation of the Work), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions or Natural Resource Damages that are within the scope of the exercised reservation. The Parties agree that the Administrative Order on Consent among EPA and certain Settling Defendants, EPA Docket No. CERCLA 06-18-03, as amended ("AOC"), shall terminate as of the Effective Date, except that the requirements for storm water management under the AOC shall terminate when EPA approves a plan under this Consent Decree that incorporates requirements for storm water management

b. Contribution Protection under the TSWDA. The Parties agree, and by entering this Consent Decree the Court finds, that this Consent Decree constitutes a settlement agreement with the State that resolves all liability of the Principal Settling Defendants, Owner Settling Defendant, Cashout Settling Defendants, and Settling Federal Agencies to the State as regards the Site, within the meaning of Tex. Health & Safety Code § 361.277(b), and therefore the Principal Settling Defendants, Owner Settling Defendant, Cashout Settling Defendants, and Settling Federal Agencies are released from liability to other persons who may have incurred response costs at the Site, as described in Tex. Health & Safety Code § 361.344(a), for cost recovery, contribution, or indemnity regarding a matter addressed in this Consent Decree, as provided by Tex. Health & Safety Code § 361.277(b).

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

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

116. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, Natural Resource Damages, or other appropriate relief relating to the Site, Settling Defendants (and, with respect to a State action, Settling Federal Agencies) 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 or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXII (Covenants by Plaintiffs).

XXV. ACCESS TO INFORMATION

117. Except as provided by Paragraph 118, Principal Settling Defendants shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain-of-custody records, manifests, trucking

logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Principal Settling Defendants shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

118. Business Confidential and Privileged Documents.

a. Principal Settling Defendants may assert business confidentiality claims covering part or all of the Records submitted to the United States under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Principal Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Principal Settling Defendants.

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

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

d. Records submitted to the State shall be subject to the confidentiality and public access requirements of the Texas Public Information Act, Tex. Gov't Code § 552.001 *et seq*.

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

XXVI. RETENTION OF RECORDS

120. Until ten years after Principal Settling Defendants' receipt of EPA's notification pursuant to Paragraph 52.b of Section XIV (Certification of Completion), each Principal Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or which come into its possession or control that

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

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

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

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

XXVII. NOTICES AND SUBMISSIONS

124. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be

directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified in this Section shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, Settling Federal Agencies, the State, and Settling Defendants, respectively. Notices required to be sent to EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice. Notices required to be sent to the "United States" shall be sent to both the U.S. Department of Justice and EPA. Notices required to be sent to "EPA" shall be sent only to EPA.

As to the United States:	Chief, Environmental Enforcement Section Environment and Natural Resources Division U.S. Department of Justice P.O. Box 7611 Washington, D.C. 20044-7611 Re: DJ # 90-11-2-07465/4 Or re: DJ # 90-11-2-07465/2 if NRD-related
and:	Chief, Environmental Defense Section Environment and Natural Resources Division U.S. Department of Justice P.O. Box 23986 Washington, D.C. 20026-3986 Re: DJ # 90-11-6-17120
As to EPA:	Director, Superfund Division United States Environmental Protection Agency Region 6 1445 Ross Avenue Dallas, TX 75202
and:	Charles David Abshire EPA Project Coordinator United States Environmental Protection Agency Region 6 1445 Ross Avenue Dallas, TX 75202
As to the EPA Financial Management Officer:	Chrisna Tan, Attorney-Advisor U.S. Environmental Protection Agency Office of Site Remediation Enforcement Room 4232J Ariel Rios South (MC 2272A) 1200 Pennsylvania Ave. NW Washington, D.C. 20460 Phone: (202) 564-4272 Fax: (202) 501-0269 E-mail: tan.chrisna@epa.gov

As to the State: notices concerning NRD claims or payments should be sent to the State officials identified in Paragraphs 62.a and b, above. All other notices required to be given to the State of Texas should be sent to both the Office of the Attorney General ("OAG") and to the TCEQ. Notices required to be given only to the TCEQ should not be sent to the OAG.	As to the OAG: Chief Environmental Protection Division (Attn: Thomas Edwards, Asst. Atty. Gen.) Texas Attorney General's Office (066) P.O. Box 12548 Austin, TX 78711-2548 Or deliver to: Wm. P. Clements State Office Bldg. 300 W. 15th St., Fl. 10 Austin, TX 78701-1649 Phone: (512) 463-2012 Fax: (512) 320-0052; and As to the TCEQ: Fay Duke State Project Coordinator - Malone Site Texas Comm. on Envtl. Quality (MC-136) P.O. Box 13087 Austin, TX 78711-3087 Or deliver to: Bldg. D, Rm. 200-21N 12100 Park 35 Circle Austin, TX 78753
As to Settling Defendants:	Bob Piniewski Settling Defendants' Project Coordinator Project Navigator, Ltd. 10497 Town and Country Way, Suite 830 Houston, TX 77024 Phone: 919-435-0934 Cell: 919-539-1928 Email: bobp@projectnavigator.com

XXVIII. RETENTION OF JURISDICTION

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

XXIX. APPENDICES

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

"Appendix A" is the ROD.
"Appendix B" is the SOW.
"Appendix C" is the description and/or maps of the Site.
"Appendix D" is the complete list of Principal Settling Defendants.
"Appendix E" is the performance guarantee.
"Appendix F" is the complete list of Major Cashout Settling Defendants.
"Appendix G" is the complete list of De Minimis Cashout Settling Defendants.

XXX. COMMUNITY RELATIONS

127. If requested by EPA or the State, Principal Settling Defendants shall participate in community relations activities pursuant to the community relations plan to be developed by EPA. EPA will determine the appropriate role for Principal Settling Defendants under the Plan. Principal Settling Defendants shall also cooperate with EPA and the State in providing information regarding the Work to the public. As requested by EPA or the State, Principal Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA or the State to explain activities at or relating to the Site. Costs incurred by the United States under this Section, including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), shall be considered Future Response Costs that Principal Settling Defendants shall pay pursuant to Section XVI (Payments for Response Costs, NRD, & NRD Assessment Costs).

XXXI. MODIFICATION

128. Except as provided in Paragraph 14 (Modification of SOW or Related Work Plans), material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the United States and a duly authorized representative of the Principal Settling Defendants, and shall be effective upon approval by the Court. Except as provided in Paragraph 14 (Modification of SOW or Related Work Plans), non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and Principal Settling Defendants. All modifications to the Consent Decree, other than the SOW, also shall be signed by the State, or a duly authorized representative of the State, as appropriate. A modification to the SOW shall be considered material if it fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii). Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

129. Modifications (non-material or material) that do not affect the obligations of or the protections afforded to Cashout Settling Defendants may be executed without the signatures of the Cashout Settling Defendants.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

131. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), 28 C.F.R. § 50.7, and Tex. Water Code § 7.110. The United States and the State reserve the right to withdraw or withhold their consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

132. 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. SIGNATORIES/SERVICE

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

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

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

XXXIV. FINAL JUDGMENT

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

137. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and Settling Defendants. The Court 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.

SO ORDERED THIS 24th DAY OF September, 2012.

Gregg Costa

United States District Judge