

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA and
STATE OF UTAH,

Plaintiffs,

v.

ENTRADA INDUSTRIES, INC.;
MOUNTAIN FUEL SUPPLY COMPANY,
INC.; QUESTAR CORPORATION,

Defendants.

CIVIL ACTION NO.

CONSENT DECREE

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RD/RA CONSENT DECREE
WASATCH CHEMICAL SITE, SALT LAKE CITY, UTAH

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("NCP"); (3) declaration of the Defendants' liability for further response costs; and (4) such other relief as the Court finds appropriate.

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. Section 9621(f)(1)(F), EPA notified the State of Utah (the "State") on April 12, 1991 of negotiations with potentially responsible parties 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 settlement.

D. The State has also filed in this Court a complaint dated January 10, 1986, and an amended complaint dated July 2, 1986, against the Defendants and others alleging that the Defendants and others are liable to the State under Section 107 of CERCLA, 42 U.S.C. Section 9607, Section 7002 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6902, Sections 26-14-15 and 26-14-19 of the Utah Code Annotated (1953, as amended), (Utah Solid and Hazardous Waste Act), Sections 26-11-8 and 26-11-16 of the Utah Code Annotated (1953, as amended), (Utah Water Pollution Control Act), and State Common Law of Nuisance, for (1) reimbursement of costs incurred or to be incurred by the State in connection with the Site; (2) an injunction requiring the Defendants and others to perform a Remedial Investigation/ Feasibility Study ("RI/FS") and response action at the Site; and (3) a declaration of the liability of the Defendants and others for further response costs; and (4) such other relief as the

Court finds appropriate.

E. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. Section 9622(j)(1), EPA notified the Federal natural resource trustee on May 6, 1991 of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustee to participate in the negotiation of this Consent Decree. State natural resource damage trustees were notified of such negotiations on April 12, 1991.

F. The Defendants that have entered into this Consent Decree ("Settling Defendants") have denied and continue to deny liability to Plaintiffs for the relief sought in the complaints. By entering into or complying with this Consent Decree or any findings or determinations made herein, the Settling Defendants do not admit any liability to the Plaintiffs arising out of the transactions or occurrences alleged in the complaints. Participation by the Settling Defendants in the Work and in negotiating and executing this Consent Decree is not, and shall not be considered, an admission nor evidence of liability for any purpose, or an admission of violation of any laws, regulations or policies by the Settling Defendants, their predecessors-in-interest, or their respective officers, directors, employees, and agents.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. Section 9605, EPA placed the Lot 6 portion of 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 February 11, 1991, 56 Fed. Reg. 3903.

H. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, Settling Defendant Entrada Industries, Inc. ("Entrada") commenced on September 28, 1988 an RI/FS for the Site pursuant to 40 C.F.R. Section 300.430.

I. Settling Defendant Entrada completed a Remedial Investigation ("RI") Report on March 30, 1990, and completed a Feasibility Study ("FS") Report on August 22, 1990.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. Section 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on October 9, 1990, in the Deseret News and the Salt Lake Tribune, major local newspapers of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator, EPA Region VIII, based the selection of the response action.

K. 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 March 29, 1991, on which the State has given its concurrence. The ROD includes a responsiveness summary to public comments. Notice of the final plan was published in

accordance with Section 117(b) of CERCLA, 42 U.S.C. Section 9617(b).

L. Based on the information presently available to EPA and the State, EPA and the State believe that the Work (as defined below) will be properly and promptly conducted by the Settling Defendants.

M. The Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. Section 9613(j).

N. The Parties recognize, and the Court by entering this Consent Decree finds, that 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 6973, 9606, 9607, and 9613(b), and pendent jurisdiction over the claims asserted by the State arising under the laws of the State of Utah. This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints, the Settling Defendants waive all objections and defenses that

they may have to the jurisdiction of the Court or to venue in this District. The 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 the Settling Defendants and their heirs, agents, successors, and assigns. Any change in ownership or corporate status of the Settling Defendants, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Defendants' responsibilities under this Consent Decree.

3. The Settling Defendants shall provide a copy of this Consent Decree to each contractor or subcontractor hired to perform the Work required by this Consent Decree and to each person representing the Settling Defendants with respect to the Site or the Work required under this Consent Decree and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work. The Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each

contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. Section 9607(b)(3).

IV. DEFINITIONS

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

"Approved Schedule" shall mean the schedule set forth in Table 1 of the Statement of Work, as modified after approval by EPA in the Final Remedial Design Work Plan, Final Design Report, and Final Remedial Action Work Plan, or as otherwise approved by EPA.

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

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

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a

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

"Dioxin Removal Wastes" shall mean those wastes, including those that were the subject of the Wasatch Lot 6 removal action conducted pursuant to Administrative Order on Consent, In the Matter of Wasatch Lot 6, Docket No. CERCLA VIII-86-04, dated April 1, 1986, which are stored in the dioxin storage facility located on the Site.

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

"Future Response Costs" shall mean all costs, including, but not limited to, indirect costs, that the United States incurs in overseeing the Work, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section XII (Access), and the costs of reviewing or developing plans, reports, and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing or enforcing this Consent Decree. Future Response Costs shall also include all costs, including indirect costs, incurred by the United States in connection with the Site between September 30, 1990, and the effective date of this Consent Decree.

"Institutional Controls" shall mean those provisions, described generally in the ROD and to be further specified, with EPA's approval, during the course of Remedial Design, to be implemented, administered, and maintained by the Settling Defendants for the purposes of ensuring the maintenance, effectiveness, and integrity of the remedy. However, the State may implement, administer, and maintain those Institutional Controls relating to ground water for which implementation, administration, and maintenance it has sole authority.

"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. Section 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Northern Portion of the Steeico Property" shall mean the property which lies to the north of a line of demarcation extending across the Steeico property at a distance of 80 feet from the northern edge of the Lot 6 portion of the Site.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work ("SOW").

"Owner Settling Defendant" shall mean Settling Defendant Entrada Industries, Inc.

"Paragraph" shall mean a portion of this Consent Decree.

identified by an arabic numeral or an upper case letter.

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

"Past Response Costs" shall mean all costs, including, but not limited to, interest and indirect costs, that the United States incurred with regard to the Site prior to September 30, 1990, and interest on that amount accrued from March 30, 1991 until and including September 30, 1991. Past Response Costs do not include those costs incurred by EPA in connection with the Wasatch Lot 6 removal action conducted pursuant to Administrative Order on Consent, In the Matter of Wasatch Lot 6, Docket No. CERCLA VIII-86-04, dated April 1, 1986. Those costs were paid pursuant to Administrative Settlement Agreement, Docket No. CERCLA VIII-90-17, executed in June 1990.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in the ROD and this Consent Decree. For purposes of this Consent Decree, Performance Standards shall not be applicable to substances present on-site only as naturally occurring substances under Section 104(a)(3)(A) of CERCLA, 42 U.S.C. Section 9604(a)(3)(A). However, the Settling Defendants shall have the burden of demonstrating to EPA, or establishing by a preponderance of the evidence if a dispute relating to this matter is subject to judicial review, that the substance is present on-site only as a naturally occurring substance under Section 104(a)(3)(A) of

CERCLA, 42 U.S.C. Section 9604(a)(3)(A). For purposes of this definition, nothing in Table 5.2 of the Record of Decision ("ROD") shall be deemed to be a naturally occurring substance. Except as provided in this Paragraph, nothing in this Consent Decree shall limit the response authorities available to EPA relating to naturally occurring substances.

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

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

"Record of Decision" or "ROD" shall mean the Record of Decision relating to the Wasatch Chemical Site signed on March 29, 1991 by the Regional Administrator, EPA Region VIII, and the Director, Utah Division of Environmental Health, Utah Department of Health, and all attachments thereto. The Record of Decision is attached hereto as Appendix A.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Defendants to implement the final plans and specifications submitted by the Settling Defendants pursuant to the Remedial Design Work Plan and approved by EPA.

"Remedial Action Work Plan" shall mean the document submitted by the Settling Defendants pursuant to Paragraph 15.a of this Consent Decree and described more fully in Paragraph 15.b.

"Remedial Design" shall mean those activities to be undertaken by the 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 submitted by the Settling Defendants pursuant to Paragraph 14.a and described more fully in Paragraph 14.b.

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

"Settling Defendants" shall mean Entrada Industries, Inc., Mountain Fuel Supply Company, Inc., and Questar Corporation.

"Site" shall mean the Wasatch Chemical Superfund site, encompassing approximately 18 acres, located at 1987 South 700 West in Salt Lake City, Salt Lake County, Utah, and depicted more particularly on the map attached as Appendix C. EPA may adjust the boundaries of the Site if contaminants from Site activities are found to have been placed on or to have migrated to areas outside of the current boundaries of the Site pursuant to Paragraph 16.b(4).

"State" shall mean the State of Utah Department of Environmental Quality ("DEQ") and any predecessor or successor departments or agencies of the State of Utah.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth

in Appendix B to this Consent Decree and any modifications made in accordance with Section XXXIV (Modification).

"Statistically Significant" shall mean that a statistical method approved by EPA pursuant to Section XIV (Submissions Requiring Agency Approval) has been applied to the data and shows that the data is statistically significant at the 99 percent level of confidence.

"Steeico Property" shall mean that property currently owned by Alta Industries, Inc. which lies to the north of the property owned by the Owner Settling Defendant.

"Supervising Contractor" shall mean the contractor retained by the Settling Defendants to carry out the Work and approved by EPA pursuant to Paragraph 13.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. Section 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. Section 6903(27); and (4) any "hazardous material" under 19-6-302(7), Utah Code Annotated.

"Work" shall mean all activities the Settling Defendants are required to perform under this Consent Decree and the SOW, except those required by Section XXVIII (Retention of Records).

V. EPA AND STATE COOPERATION

5. EPA and the State intend to cooperate in the review, oversight, evaluation, and approval of the Work. Except as otherwise provided in this Consent Decree, the process for cooperation between EPA and the State is delineated in the Site-Specific Enforcement Agreement for the Wasatch Chemical Site ("SSEA"). The SSEA is not incorporated into this Consent Decree and grants no rights or remedies to the Settling Defendants. This reference to the SSEA grants no rights to the State not otherwise provided by the SSEA or this Consent Decree.

6. In each instance in this Consent Decree where EPA makes a decision relating to Remedial Design/Remedial Action ("RD/RA"), the State will have the opportunity to concur with such decision. If the State does not concur, it may invoke the dispute resolution procedures outlined in Subparagraphs a through g, below.

a. Any substantial disagreement at the staff levels involving an EPA Project Manager and DEQ Project Officer will be referred to the respective Section Managers as soon as identified.

b. The respective Section Managers will attempt to resolve any disagreement within a maximum of two working days of the referral, and shall consult their respective legal counsel regarding any matters that may have legal consequences. If the Section Managers are unable to resolve the dispute within two working days, assistance of the respective Branch Managers will

be requested. The Branch Managers will attempt to resolve the disagreement within a maximum of two working days of the request.

c. If mutual agreement cannot be reached with the assistance of the Branch Managers within two working days of the request, any disagreement will be referred to the Director of the Division of Hazardous Waste Management, EPA Region VIII, and the Director of the Division of Environmental Response and Remediation, DEQ. The Directors or their designees will attempt to resolve the dispute within a maximum of two working days of the referral.

d. If the Directors are unable to resolve the dispute within 5 working days of the referral, the Executive Director of the Utah DEQ or his designee will have 5 working days to present DEQ's position to the Regional Administrator, EPA Region VIII or his designee. The Regional Administrator or his designee will issue a final administrative decision. This decision shall be binding upon EPA and the State, subject to the State's right to appeal the decision pursuant to Paragraphs 77-80.

e. Notwithstanding notification of the Settling Defendants pursuant to Subparagraph g, below, EPA and the State agree not to discuss disputes between EPA and the State arising under this Consent Decree with the Settling Defendants until the administrative dispute resolution procedures set forth in Subparagraphs a through d, above, are exhausted. However, this provision shall not prevent EPA or the State from seeking information from ^{*the Settling Defendants*} ~~Entrada~~ necessary to develop or support their

respective positions. The administrative dispute resolution procedures set forth in Subparagraphs a through d, above, and the formal dispute resolution procedures set forth in Paragraphs 77-80 shall be the exclusive mechanisms for resolving disputes arising under or with respect to this Consent Decree and shall apply to all provisions of this Consent Decree. The Settling Defendants shall not be entitled to participate in the dispute resolution process between EPA and the State. Comments developed by EPA and the State in conjunction with this dispute resolution process shall not be available to the public or the Settling Defendants, subject to the laws governing EPA and the State.

f. EPA and the State agree to use their best efforts to resolve disputes at the earliest possible time and lowest management level. EPA and the State agree to promptly provide each other with references or citations to any authorities or rationale relied upon as a basis for their respective positions.

g. EPA and the State will jointly notify the Settling Defendants in writing of any dispute between EPA and the State relating to Work to be performed, or being performed, by the Settling Defendants upon referral of that dispute to the Director of the Hazardous Waste Management Division, EPA Region VIII, and the Director of the Division of Environmental Response and Remediation, DEQ. The Settling Defendants shall commence or recommence Work, if stopped, within 3 days of receipt of written notification by the Regional Administrator, EPA Region VIII or his designee of his final decision in dispute resolution, or, if

the dispute is resolved before a final decision is issued by the Regional Administrator or his designee, within 3 days of receipt of joint written notification of same from EPA and the State.

VI. GENERAL PROVISIONS

7. Objectives of the Parties.

The objectives of the Parties in entering into this Consent Decree are to protect public health and welfare and the environment from releases or threatened releases of Waste Material from the Site by the design and implementation of the Remedial Action and Operation and Maintenance at the Site by the Settling Defendants, to reimburse the Plaintiffs for their response costs, and to return the Site to productive use.

8. Commitments by the Settling Defendants.

The Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, including, but not limited to, the SOW and all standards, specifications, and schedules set forth in or developed pursuant to this Consent Decree. In addition, the Settling Defendants shall reimburse the United States for Past Response Costs and Future Response Costs, and the State for State response costs, past and future, as provided in this Consent Decree. All Settling Defendants are bound by the terms of this Consent Decree and the SOW. However, the Settling Defendants affirm that they have agreed among themselves that the Work and certain other obligations of this Consent Decree and the SOW will be performed by Settling Defendant Entrada.

9. Compliance With Applicable Law.

All activities undertaken by the Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The United States has determined that the activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP. The State's concurrence with EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 53 shall constitute a determination by the State that the activities conducted pursuant to this Consent Decree are consistent with the NCP.

10. Permits.

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. Section 9621(e), and the NCP, no federal, state, or local permit shall be required for any portion of the Work conducted entirely on the Site. Where any portion of the Work requires a federal, state, or local permit or approval, the Settling Defendants shall timely submit applications and take all other actions necessary to obtain all such permits or approvals.

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

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

11. Notice of Obligations to Successors-in-Title.

a. Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall record a certified copy of this Consent Decree with the Recorder's Office, Salt Lake County, State of Utah, and/or other office where land ownership and transfer records are maintained for the property.

Thereafter, each deed, title, or other instrument of conveyance for property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and any lien retained by the United States and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of the Owner Settling Defendant with respect to the provision of access under Section XII (Access) and the implementation, administration, and maintenance of Institutional Controls under Section X (Institutional Controls) shall be binding upon the Settling Defendants and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall record with the Recorder's Office, Salt Lake County, Utah, and/or other office where land ownership and transfer records are maintained for the property, a notice of obligation to: (1) provide access under Section XII (Access); and (2) implement, administer, and maintain Institutional Controls under Section X (Institutional Controls). Within 15

days of approval by EPA of Institutional Controls pursuant to this Consent Decree and the SOW, the Owner Settling Defendant shall record with the Recorder's Office, Salt Lake County, Utah, and/or other office where land ownership and transfer records are maintained for the property, a list and description of Institutional Controls to be implemented, administered, and maintained by the Owner Settling Defendant and, if appropriate, a list and description of Institutional Controls relating to ground water which the State has sole authority to implement, administer, and maintain. Each subsequent deed to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. The Owner Settling Defendant and any Successors-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Settling Defendants' obligations under this Consent Decree shall continue to be met by the Settling Defendants. In addition, if the United States approves, the grantee may perform some or all of the Work. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the obligation of the Settling Defendants to comply with the Consent Decree.

VII. PERFORMANCE OF THE WORK BY THE SETTLING DEFENDANTS

12. Upon or prior to the completion of the Additional Studies and Design Basis Report, as defined in Paragraph 14.d and the SOW, the Settling Defendants shall make a recommendation to EPA as to the commercial availability of the In-Situ Vitrification (ISV) process. If EPA determines that the ISV process is not commercially available, the ROD may be reopened for purposes of selecting an alternative remedy for soils, sludges, and Dioxin Removal Wastes, and all Work under this Consent Decree and the SOW with respect to the ISV process shall cease. Remediation of soils, sludges, and Dioxin Removal Wastes shall commence following the selection by EPA of an alternative remedy, and a modification of this Consent Decree or EPA's issuance of an Order to the Settling Defendants pursuant to Section 106 of CERCLA, 42 U.S.C. Section 9606. Any dispute by the Settling Defendants relating to EPA's determination of the commercial availability of the ISV process shall be resolved pursuant to Paragraphs 71-74 and 76. Any such dispute between EPA and the State shall be resolved pursuant to Paragraphs 6, 77, and 78.

13. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by the Settling Defendants pursuant to Sections VII (Performance of the Work by the Settling Defendants), VIII (Additional Response Actions), IX (U.S. EPA Periodic Review), and XI (Quality Assurance, Sampling and Data Analysis) shall be under the

direction and supervision of Harding Lawson Associates, the selection of which Supervising Contractor has been approved by EPA, with the concurrence of the State. If at any time after the date of lodging of this Consent Decree the Settling Defendants propose to change a Supervising Contractor, the Settling Defendant shall give such notice to EPA and the State and shall obtain approval from EPA before the new Supervising Contractor performs, directs, or supervises any Work.

b. EPA will notify the Settling Defendants in writing of its approval or disapproval of any change of Supervising Contractor. If EPA disapproves of the selection of any contractor as Supervising Contractor, the Settling Defendants shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to the Settling Defendants within 30 days of receipt of such disapproval of the contractor previously selected. EPA will provide written notice to the Settling Defendants of the names of the contractor(s) that it approves. The Settling Defendants may select any approved contractor from that list and shall notify EPA and the State of the name of the contractor selected within 21 days of EPA's designation of contractors it approves. If EPA fails to provide written notice of its approval or disapproval of the names on the list as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, the Settling Defendants may seek relief

under the provisions of Section XXI (Force Majeure) hereof.

14. Remedial Design.

a. Within 60 days after the lodging of this Consent Decree, the Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan"). If public comments are received after the lodging of, and result in changes to, this Consent Decree such that the Remedial Design Work Plan is substantively affected, the Remedial Design Work Plan shall be submitted within 30 days after the close of the public comment period, unless EPA and the State agree otherwise. The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD in accordance with the SOW and, upon its approval by EPA, shall become enforceable under this Consent Decree. Concurrent with the submission of the Remedial Design Work Plan, the 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. Section 1910.120. As required by the SOW, the Settling Defendants shall also submit the following documents to EPA and the State concurrently with the Remedial Design Work Plan: (1) a Sampling and Analysis Plan ("SAP"); (2) a Quality Assurance Project Plan for Remedial Design ("QAPP") in accordance with Section XI (Quality Assurance, Sampling and Data Analysis); and (3) an Additional Studies Work Plan for, among other things, the

treatability study described in the SOW.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, descriptions and schedules for the development of: (1) an Additional Studies and Design Basis Report; (2) a Preliminary Design Report; (3) a Construction Quality Assurance Plan ("CQAP"), of which the Construction Quality Control Plan is a part; (4) a Groundwater Monitoring Plan; (5) a Remedial Action Operation Plan; (6) O & M Updates to the Remedial Action Operation Plan; (7) a Pre-Final Design Report; and (8) a Final Design Report. The CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official") to conduct a quality assurance program during the construction phase of the project. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action milestones, including those relating to construction.

c. Upon approval of the Remedial Design Work Plan by EPA and submittal of the Health and Safety Plan for all field activities to EPA and the State, the Settling Defendants shall implement the Remedial Design Work Plan. The Settling Defendants shall submit all plans, reports, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval). Unless otherwise

directed by EPA, the Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The Additional Studies and Design Basis Report, the contents of which are described in the SOW, shall be submitted in accordance with the approved schedule for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval). Upon approval by EPA of the Additional Studies and Design Basis Report, the Settling Defendants shall prepare the Preliminary Design Report, the Pre-Final Design Report, and the Final Design Report described in the SOW.

e. The following Remedial Action planning documents shall be submitted concurrent with the Pre-Final Design Report: (1) a CQAP; (2) a Ground Water Monitoring Plan; and (3) a Remedial Action Operation Plan.

15. Remedial Action.

a. Within 30 days after the approval of the Final Design Report, the Settling Defendants shall, to the extent deemed necessary by EPA, revise the Remedial Design Work Plan to provide for the performance of the Remedial Action at the Site ("Remedial Action Work Plan") and shall submit the work plan to EPA and the State. The Remedial Action Work Plan shall provide for construction of the remedy, in accordance with the SOW, as set forth in the design plans and specifications in the approved Final Design Report. Upon its approval by EPA, the Remedial Action Work Plan shall become enforceable under this Consent

Decree.

b. The Remedial Action Work Plan shall include, at a minimum, the following: (1) revisions, to the extent deemed necessary by EPA, of the Remedial Design planning documents; and (2) an initial formulation of the Settling Defendants' Remedial Action project team (including, but not limited to, the Remedial Action Supervising Contractor, if different from the Remedial Design Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, the Settling Defendants shall implement the activities required under the Remedial Action Work Plan. The Settling Defendants shall submit all plans, reports, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XIV (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, the Settling Defendants shall not commence physical on-site activities at the Site prior to approval of the Remedial Action Work Plan. If EPA fails to provide written approval of the Remedial Action Work Plan and this failure prevents the Settling Defendants from meeting one or more deadlines, the Settling Defendants may seek relief under the provisions of Section XXI (Force Majeure).

d. The Settling Defendants shall submit to EPA and the State O & M Updates describing the O & M activities required to maintain the effectiveness of the Remedial Action in accordance with the approved schedule, for review and approval pursuant to

Section XIV (Submissions Requiring Agency Approval).

16. The Work performed by the Settling Defendants pursuant to this Consent Decree shall, at a minimum, achieve the following Performance Standards:

a. For Soils, Sludges, and Dioxin Removal Wastes

(1) (a) Excavate and stage for treatment all soils and sludges within the Site containing indicator chemicals at levels in excess of the soil action levels listed in Table 5.2 of the ROD. The soil action level of 7 ppm for alpha- and gamma-Chlordane listed in Table 5.2 of the ROD applies to the total amount of Chlordane. Areas of contaminated soils to be excavated for treatment are the area on the Lot 6 portion of the Site which was the subject of a removal action completed on July 3, 1991, and those areas identified in Figure 5.1 of the ROD. If, during Remedial Design or Remedial Action, other soils or sludges which exceed soil action levels are encountered, these shall also be excavated to or below soil action levels.

(b) Stage for treatment all Dioxin Removal

Wastes.

(2) Vitrify:

- (a) all staged soils and sludges so that the levels of contaminants remaining in the vitrified soils and sludges do not exceed the soil action levels listed in Table 5.2 of the ROD. The soil action level of 7 ppm listed in Table 5.2 of the ROD applies to the total amount of Chlordane.
- (b) all staged Dioxin Removal Wastes so that the levels of contaminants remaining in the vitrified Dioxin Removal Wastes do not exceed Land Disposal Restriction ("LDR") treatment standards identified in Table 7.1 of the ROD, unless EPA grants a No Migration Petition or other variance or approves another LDR compliance option related to such Performance Standards. Any dispute by the Settling Defendants relating to EPA's decision not to grant a No Migration Petition or other variance or to disapprove another LDR compliance option related to such Performance

Standards shall be resolved pursuant to Paragraphs 71-74 and 76. Any such dispute between EPA and the State shall be resolved pursuant to Paragraphs 6, 77, and 78 (or 80, if deemed applicable by the Court).

- (3) Meet all other Applicable or Relevant and Appropriate Requirements ("ARARs") identified in the ROD for the remediation of soils, sludges, and Dioxin Removal Wastes.
- (4) Treat soils located between Buildings M and K contaminated with xylene and toluene at levels in excess of 100 ppm total petroleum hydrocarbons (TPH) with on-site landfarming so that TPH levels do not exceed 100 ppm in the treated soil.

b. For Ground Water

- (1) Reduce contaminant levels in ground water within the area of attainment to Maximum Contaminant Levels ("MCLs") and proposed MCLs for all contaminants for which MCLs and proposed MCLs exist, including those MCLs and proposed MCLs listed in Table 5.4 of the ROD.
- (2) Within the first 5 years of remedial action, reduce by at least 50 percent the

levels of individual contaminants found in ground water, as compared to the levels of contaminants present in the ground water at the commencement of remedial action.

- (3) Meet all other ARARs identified in the ROD for the remediation of ground water.
- (4) The area of attainment is the Site. EPA may adjust the boundaries of the area of attainment if contaminants from Site activities are found to have been placed on or to have migrated to areas outside of the current boundaries of the Site. Any dispute by the Settling Defendants relating to EPA's determination that contaminants from Site activities were placed on or migrated to areas outside of the current boundaries of the Site shall be resolved pursuant to Paragraphs 71-73, 75, and 76. Any such dispute between EPA and the State shall be resolved pursuant to Paragraphs 6, 77, and 79. However, dispute resolution shall not be available with regard to EPA's choice among the enforcement authorities available to it, all of which are specifically reserved. Furthermore, dispute resolution shall not be available to the State

with respect to determinations of liability made by EPA.

17. a. If, with respect to the ground water treatment and extraction system, the Settling Defendants collect data that they believe demonstrates that

- (1) the reduction of contaminant levels in ground water within the area of attainment to the action levels of Maximum Contaminant Levels ("MCLs") and proposed MCLs for all contaminants for which MCLs or proposed MCLs exist ("Action Level Performance Standard for Ground Water"), cannot be achieved due to technical limitations which are reflected in asymptotic conditions, or
- (2) within the first 5 years of remedial action, the reduction by at least 50 percent of the levels of individual contaminants found in the ground water, as compared to the levels of contaminants present in the ground water at the commencement of remedial action ("50 Percent Reduction Performance Standard for Ground Water"), cannot be achieved,

notwithstanding best efforts by the Settling Defendants to implement fully the remedial measures required by this Consent Decree and the SOW, the Settling Defendants may petition EPA to

waive or modify the requirements which cannot be achieved based upon a demonstration, in accordance with the provisions of Section 121(d)(4)(C) of CERCLA, 42 U.S.C. Section 9621(d)(4)(C), and any applicable regulations or EPA guidance, that it is "technically impracticable from an engineering perspective" to attain the Performance Standard. A copy of the Settling Defendants' petition shall also be provided to the State.

b. "Best efforts" shall include implementation of the Remedial Action in compliance with this Consent Decree and the SOW, and, subject to EPA approval pursuant to Section XIV (Submissions Requiring Agency Approval), implementation of measures to maximize the performance of the Remedial Action to attain the Performance Standards, including, but not limited to:

- (1) modifying the pump and treat system by, for example, (a) alternating pumping at wells to eliminate stagnation points, (b) pulse pumping to allow aquifer equilibration and to allow adsorbed contaminants to partition into ground water, and (c) installing additional extraction wells to facilitate or accelerate cleanup of the contaminant plume;
- (2) ensuring capture of the contaminant plume within the area of attainment;
- (3) identifying and remediating any additional or previously uncharacterized sources of ground water contamination within the Site

boundaries; and

- (4) in the case of a petition regarding the Action Level Performance Standard for Ground Water, operating the ground water treatment and extraction system for a period of not less than 5 years.

c. The Settling Defendants' petition shall include:

- (1) an identification of each Performance Standard for which a waiver or modification is sought;
- (2) a justification setting forth the technical basis for the claim that it is technically impracticable from an engineering perspective to attain each such Performance Standard at the Site. The justification shall include the scientific and engineering basis for the petition, including hydrologic, geochemical, modeling, and technological bases substantiating the claim that it is technically impracticable to attain the Performance Standard which is the subject of the petition. The justification shall also demonstrate that best efforts were employed to attain the Performance Standard.
 - (a) For the Action Level Performance Standard for Ground Water, the

justification shall demonstrate with a 99 percent confidence limit that concentrations of each contaminant for which a waiver or modification is sought remain at statistically significant asymptotic values above MCLs or, if appropriate, proposed MCLs, based on a four point moving average or other statistical test for a period of two years of quarterly monitoring at each well used for monitoring compliance with such Performance Standard.

- (b) For the 50 Percent Reduction Performance Standard for Ground Water, the justification shall demonstrate with a 99 percent confidence limit the rate of reduction for each contaminant for which a waiver or modification is sought, using a four point moving average or other statistical method approved by EPA pursuant to Section XIV (Submissions Requiring Agency Approval) over all the wells used for monitoring compliance with such Performance Standard. The justification shall also demonstrate that contaminant concentrations at the

end of 5 years after startup of the ground water treatment and extraction system are or will be above 50 percent of the concentrations of individual contaminants present in the ground water at the commencement of remedial action using an arithmetic average;

- (3) a proposed Alternative Performance Standard which shall reflect,
 - (a) for a petition regarding the Action Level Performance Standard for Ground Water, the lowest concentration of the contaminant for which a waiver or modification is sought that is technically practicable from an engineering perspective to attain at the Site, and
 - (b) for a petition regarding the 50 Percent Reduction Performance Standard for Ground Water, the most rapid rate of removal of contaminants from ground water that the Settling Defendants believe is technically practicable from an engineering perspective at the Site;
- (4) an evaluation of new technologies for ground water restoration to ensure that the Remedial

Action is using the best available technology, and a description of any additional response actions to be taken by the Settling Defendants to ensure that the remedial action is using the best available technology and will be protective of human health and the environment; and

- (5) a demonstration that the ground water portion of the Remedial Action at the Site, together with any additional response actions proposed by the Settling Defendants in their petition, will meet the Alternative Performance Standards, and will control further releases and attain a degree of cleanup of the contaminants for which a waiver or modification is sought, in order to ensure protection of human health and the environment.

d. Based on a review of the petition and any supporting information submitted by the Settling Defendants, EPA will determine whether to waive compliance with or to modify the Action Level Performance Standard for Ground Water or the 50 Percent Reduction Performance Standard for Ground Water, and/or implement any additional response actions. If EPA grants the petition, in whole or in part, EPA will make findings:

- (1) setting forth any Performance Standards for ground

- water which have been modified or waived;
- (2) identifying any Alternative Performance Standards for ground water that the Settling Defendants shall be required to meet; and
 - (3) determining any additional response actions to be taken by the Settling Defendants to ensure that the Remedial Action is using the best available technology and will be protective of human health and the environment.

e. If EPA grants any petition, in whole or in part, the Settling Defendants shall thereafter achieve and maintain all Alternative Performance Standards established pursuant to this Paragraph and all Performance Standards which are not waived.

f. Any dispute by the Settling Defendants relating to EPA's decisions and findings with respect to any petition under this Paragraph shall be resolved pursuant to Paragraphs 71-74 and 76. Any such dispute between EPA and the State shall be resolved pursuant to Paragraphs 6, 77, and 78 (or 80, if deemed applicable by the Court).

g. Nothing in this Paragraph affects EPA's authority to require the Settling Defendants to perform additional response actions relating to ground water pursuant to Section VIII (Additional Response Actions) and/or Section IX (U.S. EPA Periodic Review).

18. The Settling Defendants acknowledge and agree that 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. The Settling Defendants' compliance with the work requirements shall not foreclose Plaintiffs from seeking compliance with all terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

19. a. The Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to a waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA and State Project Managers of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

b. The Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; (4) the method of transportation; and (5) a certification that the facility is in compliance with its operating requirements. The Settling Defendants shall notify the state in which the planned receiving facility is located of

major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

c. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 19.b as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VIII. ADDITIONAL RESPONSE ACTIONS

20. In the event that EPA, the State, and/or the Settling Defendants determine that additional response actions are necessary to meet the Performance Standards and/or Alternative Performance Standards approved by EPA pursuant to Paragraph 17, or to carry out the remedy selected in the ROD, notification of such additional response actions shall be provided to the Project Manager for the other Parties. If the State proposes additional response actions, EPA will determine whether those response actions are necessary and will, if it determines they are necessary, provide notification of same to the Project Manager for the Settling Defendants.

21. Within 30 days of receipt of notice from EPA pursuant to Paragraph 20 that additional response actions are necessary or such longer time as may be specified by EPA, the Settling Defendants shall submit to EPA and the State, for approval by EPA, a work plan for the additional response actions. The plan

shall conform to the requirements of Paragraphs 14 and 15. Upon approval of the plan pursuant to Section XIV (Submissions Requiring Agency Approval), the Settling Defendants shall implement the plan for additional response actions in accordance with the schedule contained therein. If EPA adjusts the boundaries of the area of attainment pursuant to Paragraph 16.b(4) and the Settling Defendants dispute EPA's determination that contaminants from Site activities were placed on or migrated to areas outside of the current boundaries of the Site, work plans for those additional response actions shall be submitted for approval within 30 days after a final administrative decision is issued by the Director of the Waste Management Division, EPA Region VIII, pursuant to Paragraph 75.

22. Any additional response actions that the Settling Defendants propose are necessary to meet the Performance Standards, and/or Alternative Performance Standards approved by EPA pursuant to Paragraph 17, or to carry out the remedy selected in the ROD, shall be subject to approval by EPA, and, if authorized by EPA, shall be completed by the Settling Defendants in accordance with plans, specifications, and schedules approved or established by EPA pursuant to Section XIV (Submissions Requiring Agency Approval).

23. Except as provided in Paragraph 16.b(4), the Settling Defendants may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute EPA's determination that additional response actions are necessary to meet the Performance

Standards and/or Alternative Performance Standards approved by EPA pursuant to Paragraph 17, or to carry out the remedy selected in the ROD. Such a dispute shall be resolved pursuant to Paragraphs 71-74 and 76.

IX. U.S. EPA PERIODIC REVIEW

24. The Settling Defendants shall conduct any studies and investigations as requested by EPA in order to permit EPA to conduct reviews at least every 5 years as required by Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), and any applicable regulations. EPA may consider accepting payment from the Settling Defendants of the actual costs of those studies and investigations in lieu of Settling Defendants' conduct of such studies and investigations.

25. The State, the Settling Defendants, and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. Sections 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, 42 U.S.C. Section 9621(c), and to submit written comments for the administrative record during the public comment period. After the period for submission of written comments is closed, the Regional Administrator, EPA Region VIII, or his designee, will determine in writing whether further response actions are appropriate.

26. If the Regional Administrator, EPA Region VIII, or his designee, determines that information received, in whole or in

part, during the review conducted pursuant to Section 121(c) of CERCLA, 42 U.S.C. Section 9621(c), indicates that the Remedial Action is not protective of human health and the environment, the Settling Defendants shall undertake any further response actions EPA has determined are appropriate and that are not barred under Section XXIV (Covenants Not to Sue by Plaintiffs). The Settling Defendants shall submit a plan for such work to EPA and the State and shall implement the plan as approved by EPA. However, the Settling Defendants may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute (1) EPA's determination that the Remedial Action is not protective of human health and the environment, or (2) EPA's selection of the further response actions ordered. Such a dispute shall be resolved pursuant to Paragraphs 71-74 and 76.

X. INSTITUTIONAL CONTROLS

27. Except for those Institutional Controls relating to ground water which the State has sole authority to implement, administer, and maintain, the Settling Defendants shall fully implement, administer, and maintain the Institutional Controls delineated in the EPA-approved Final Design Report in accordance with such Final Design Report. The Settling Defendants shall, pursuant to Section XVI of this Decree (Assurance of Ability to Complete Work), ensure at all times that sufficient resources are provided to fully implement, administer, and maintain during Remedial Action Institutional Controls. Failure to adequately implement, administer, and maintain such Institutional Controls

for which they are responsible or to ensure that sufficient resources are provided to fully implement, administer, and maintain Institutional Controls shall subject the Settling Defendants to Stipulated Penalties specified in Section XXIII of this Decree, unless such failure is excused pursuant to Section XXI (Force Majeure). Stipulated Penalties shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Defendants' failure to adequately implement, administer, or maintain such Institutional Controls.

XI. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

28. The Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all environmental treatability, design, compliance and monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/30); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments or revisions to such guidelines upon notification to the Settling Defendants of such amendment by EPA. Amended or revised guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any sampling or monitoring project under this Consent Decree, the Settling Defendants shall submit to EPA and the State, for approval by EPA, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance

documents. If relevant to the proceeding, 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. The Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access to all laboratories utilized by the Settling Defendants in implementing this Consent Decree. In addition, the Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. The Settling Defendants shall ensure that the laboratories utilized by them pursuant to this Consent Decree perform all analyses according to accepted EPA methods. Unless otherwise provided in the SOW or planning documents, accepted EPA methods consist of those methods which are documented in the "Contract Laboratory Program Statement of Work for Inorganic Analysis" and the "Contract Laboratory Program Statement of Work for Organic Analysis," dated February 1988, and any amendments or revisions made thereto during the course of the implementation of this Decree. The Settling Defendants shall ensure that all laboratories used by them pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

29. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives, provided that sufficient quantity of sampling material is available. The procedures for collecting

such split or duplicate samples shall be the procedures set forth in the approved QAPP. The Settling Defendants shall notify EPA and the State not less than 7 days in advance of any sample collection activity. In addition, EPA and the State shall have the right to take any additional samples that EPA and/or the State deem necessary. Upon request, EPA and the State shall allow the Settling Defendants to take split or duplicate samples of any samples they take as part of the Plaintiffs' oversight of the Settling Defendants' implementation of the Work, provided that sufficient quantity of sampling material is available.

30. Within 7 days of a request by EPA or the State, the Settling Defendants shall submit to EPA and the State 2 copies each of the results, if available to the Settling Defendants or, if not available, within 7 days after the results become available to the Settling Defendants, of all sampling and/or tests or other data obtained or generated by or on behalf of the Settling Defendants with respect to the Site and/or the implementation of this Consent Decree. EPA and/or the State will submit to the Settling Defendants a copy of the results, after they become available, of all sampling and/or tests or other data obtained or generated by or on behalf of EPA or the State with respect to the Site and/or implementation of this Consent Decree.

31. Notwithstanding any provision of this Consent Decree, the United States and the State hereby 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.

XII. ACCESS

32. Commencing on the date of lodging of this Consent Decree, the Settling Defendants agree that the United States, the State, and their representatives, including EPA and its contractors, shall have access at all times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by the Settling Defendants, for the purposes of conducting any activity related to this Consent Decree, including, but not limited to:

- a. Monitoring the Work;
- b. Verifying any data or information submitted to the United States or the State;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- f. Inspecting and copying records, operating logs, contracts or other documents maintained or generated by the Settling Defendants or their agents; and
- g. Assessing the Settling Defendants' compliance with this Consent Decree.

33. The Settling Defendants and their representatives shall have the right to accompany the United States, the State, and

their representatives, including EPA and its contractors, on property owned or controlled by the Settling Defendants, provided that the Settling Defendants and/or their representatives are ready and available at the time the United States, the State, or their representatives, including EPA and its contractors, intend to enter the property. That the Settling Defendants and/or their representatives are not ready and available shall not limit access to the Site by the United States, the State, or their representatives.

34. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than the Settling Defendants, the Settling Defendants shall use best efforts to secure from such persons access for the Settling Defendants, as well as for the United States, the State, and their representatives, including EPA and its contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of entry of this Consent Decree, or within 45 days of the date EPA notifies the Settling Defendants in writing that additional access beyond that previously secured is necessary, the Settling Defendants shall promptly notify the United States and the State, and shall include in that notification a summary of the steps the Settling Defendants have taken to attempt to obtain access. The

United States or the State may, as they deem appropriate, assist the Settling Defendants in obtaining access. The Settling Defendants shall reimburse the United States or the State, in accordance with the procedures in Section XIX (Reimbursement of Response Costs), for all costs incurred by the United States or the State in obtaining access, including, but not limited to, attorneys' fees and the amount of just compensation.

35. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. REPORTING REQUIREMENTS

36. In addition to any other requirement of this Consent Decree, the Settling Defendants shall submit to EPA and the State 2 copies each 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 the Settling Defendants or their contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next month and provide other information

relating to the progress of construction, including, but not limited to, project scheduling charts or diagrams; (e) include information regarding progress towards 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 the 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 month. The Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the entry of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 54.b of Section XVII (Certification of Completion). The frequency of submission of these reports may be modified by EPA in accordance with the SOW. If requested by EPA or the State, the Settling Defendants shall also provide briefings for EPA and the State to discuss the progress of the Work.

37. The Settling Defendants shall notify EPA and the State 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 7 days prior to the performance of the activity.

38. Upon the occurrence of any event during performance of

the Work that the Settling Defendants are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. Section 9603, or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. Section 11004, the Settling Defendants shall within 24 hours of the onset of such event orally notify the EPA Project Manager or the Alternate EPA Project Manager (in the event of the unavailability of the EPA Project Manager), or, in the event that neither the EPA Project Manager nor the Alternate EPA Project Manager is available, the Emergency Response Section, Region VIII, United States Environmental Protection Agency. Following the same procedure, the Settling Defendants shall also promptly orally notify the State Project Manager or the Alternate State Project Manager (in the event of the unavailability of the State Project Manager). These reporting requirements are in addition to the reporting required by CERCLA Section 103, 42 U.S.C. Section 9603, or EPCRA Section 304, 42 U.S.C. Section 11004. Within 20 days of the onset of such an event, the Settling Defendants shall furnish to Plaintiffs a written report, signed by the Settling Defendants' Project Manager, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, the Settling Defendants shall submit, unless deemed unnecessary by EPA, a report setting forth all actions taken in response thereto.

39. The Settling Defendants shall submit to the Court, EPA and the State each year, within 30 days of the anniversary of the

entry of this Consent Decree, copies of the monthly progress reports submitted to EPA and the State during the preceding 12 months, together with a statement of tasks remaining to be accomplished and a schedule for implementation of the remaining work. The Settling Defendants shall submit to EPA and the State a copy of the submittal to the Court as evidence of compliance with the requirement of this Paragraph.

40. The Settling Defendants shall submit 2 copies of all plans, reports, and data 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. The Settling Defendants shall simultaneously submit 2 copies of all such plans, reports and data to the State.

41. All reports and other documents submitted by the Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document the Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendants.

XIV. SUBMISSIONS REQUIRING AGENCY APPROVAL

42. After review of any plan, report, or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) direct that the Settling Defendants modify the submission; (e)

disapprove, in whole or in part, the submission, notifying the Settling Defendants in writing of deficiencies; or (f) any combination of the above.

43. in the event of approval, approval upon conditions, or modification by EPA, the Settling Defendants shall take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XXII (Dispute Resolution) with respect to the modifications or conditions made by EPA.

44. Upon receipt of a notice of disapproval or a notice requiring a modification, the Settling Defendants shall, within 21 days or such other time as specified by EPA in such notice or the SOW, correct the deficiencies and resubmit the plan, report, or other item for approval. Notwithstanding the notice of disapproval or a notice requiring a modification, the Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission.

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

by EPA.

46. If, upon the first resubmission or upon any subsequent resubmission, the plan, report, or item is disapproved by EPA due to a material defect, the Settling Defendants shall be deemed to be in violation of the provision of this Consent Decree requiring the Settling Defendants to submit such plan, report, or item unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution) and this Court overturns EPA's disapproval pursuant to that Section. The provisions of Section XXII (Dispute Resolution) and Section XXIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. Implementation of any non-deficient portion of a submission shall not relieve the Settling Defendants of any liability for stipulated penalties under Section XXIII (Stipulated Penalties) related to the deficient portion of the submission, but may, at the sole, unreviewable discretion of EPA, be a factor in EPA's consideration of any mitigation of stipulated penalties under Section XXIII (Stipulated Penalties).

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

XV. PROJECT MANAGERS

48. The Settling Defendants have selected and EPA has approved, with the concurrence of the State, Roland Gow as the Settling Defendants' Project Manager. EPA's Project Manager is Bert Garcia, Remedial Project Manager, EPA Region VIII. EPA's Alternate Project Manager is Lisa Reed, Remedial Project Manager, EPA Region VIII. The State's Project Manager is Duane Mortensen. The State's Alternate Project Manager is Brad Johnson. If a Project Manager or Alternate Project Manager initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Manager shall be subject to approval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Manager shall not be acting as an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

49. 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 Manager and Alternate Project

Manager shall have the authority lawfully vested in a Remedial Project Manager (RPM) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Manager or Alternate Project Manager shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

50. The Project Managers for EPA, the State, and the Settling Defendants will meet, at a minimum, on a quarterly basis. EPA will provide the State's and the Settling Defendants' Project Managers with 7 days notice prior to such meeting.

XVI. ASSURANCE OF ABILITY TO COMPLETE WORK

51. Within 30 days of lodging of this Consent Decree, the Settling Defendants shall establish and maintain financial security in the amount of \$3.4 million in one of the following forms:

- a. a surety bond guaranteeing performance of the Work;
- b. one or more irrevocable letters of credit;
- c. a trust fund;
- d. a guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with the Settling Defendants; or

e. a demonstration that the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f).

52. If the Settling Defendants seek to demonstrate the ability to complete the Work by establishing and maintaining financial security in the form of one or more letters of irrevocable credit, EPA will, pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. Section 9622(b)(3), set up a special account in the Superfund and any monies obtained through such irrevocable letters of credit as a result of the Settling Defendants' failure to complete the Work will be placed in the special account. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 51(d), the Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If the Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee, they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Paragraph are inadequate, the Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 51. The Settling Defendants' inability to demonstrate financial ability to complete the Work shall not

excuse performance of any activities required under this Consent Decree. The Settling Defendants shall provide to the State copies of all documents they submit to EPA under this Section.

XVII. CERTIFICATION OF COMPLETION

53. Completion of the Remedial Action.

a. Within 90 days after the Settling Defendants conclude that the Remedial Action has been fully performed in accordance with the requirements of this Consent Decree and the SOW, and that

(1) For Soils, Sludges, and Dioxin Removal Wastes

a. the Performance Standards have been attained, and

(2) For Ground Water

a. the Performance Standards described in Paragraph 16.b(1), and/or any Alternative Performance Standards approved by EPA pursuant to Paragraph 17, have been attained and met continuously for 5 consecutive quarters, and

b. the Performance Standards described in Paragraph 16.b(3) have been attained,

the Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by the EPA, the State, and the Settling Defendants. If, after the pre-certification inspection, the Settling Defendants still believe that the

Remedial Action has been fully performed and that the requirements of this Consent Decree have been met, they shall submit a written report requesting certification to EPA and the State for EPA approval pursuant to Section XIV (Submissions Requiring Agency Approval) within 30 days of the inspection. In the report, a registered professional engineer shall state that the Remedial Action has been completed in full satisfaction of the requirements of the SOW and meets the Performance Standards and/or Alternative Performance Standards approved by EPA pursuant to Paragraph 17. The written report shall include as-built drawings signed and stamped by a registered professional engineer. The report, which shall be signed by a responsible corporate official of the Settling Defendants, shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree, and shall also contain the following statement:

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

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree, EPA will notify the Settling Defendants in writing of the activities that must be undertaken to complete the Remedial Action. EPA will set forth in the

notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA and the State for EPA approval pursuant to Section XIV (Submissions Requiring Agency Approval). The 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 XXII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion by the Settling Defendants, that the Remedial Action has been fully performed in accordance with this Consent Decree and the SOW and that the Performance Standards have been achieved, EPA will so certify in writing to the 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 XXIV (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Remedial Action shall not affect the Settling Defendants' obligations under this Consent Decree that continue beyond the Certification of Completion of the Remedial Action, including, but not limited to, obligations relating to Institutional Controls, U.S. EPA periodic reviews, access, Operation and Maintenance, record retention, indemnification, insurance, and payment of Future Response Costs and penalties.

54. Completion of the Work.

a. Within 90 days after the Settling Defendants conclude that all phases of the Work (including O & M), have been fully performed, the Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by EPA, the State, and the Settling Defendants. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed and is protective of human health and environment, the Settling Defendants shall submit to EPA and the State a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of the SOW and meets the Performance Standards and/or Alternative Performance Standards approved by EPA pursuant to Paragraph 17. The report, which shall be signed by a responsible corporate official of the Settling Defendants, shall state that the Work has been completed in full satisfaction of the requirements of this Consent Decree, and shall also contain the following statement:

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

If, after review of the written report, EPA determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify the Settling Defendants in writing of the activities that must be undertaken to complete the

Work. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendants to submit a schedule to EPA and the State for EPA approval pursuant to Section XIV (Submissions Requiring Agency Approval). The 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 XXII (Dispute Resolution).

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

XVIII. EMERGENCY RESPONSE

55. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, the Settling Defendants shall, subject to Paragraph 56, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release and shall immediately notify the EPA's Project Manager, or, if the Project Manager is

unavailable, EPA's Alternate Project Manager. If neither of these persons is available, the Settling Defendants shall notify the EPA Emergency Response Unit, Region VIII. Following the same procedure, the Settling Defendants shall also promptly orally notify the State's Project Manager or, if the State's Project Manager is unavailable, the State's Alternate Project Manager. The Settling Defendants shall take such actions in consultation with EPA's Project Manager or other available authorized EPA officer, and with the State's Project Manager, Alternate Project Manager, or other available DEQ officer. Furthermore, the Settling Defendants shall take such actions in accordance with all applicable provisions of the Health and Safety Plan, including the Contingency provisions therein, and any other applicable plans or documents developed pursuant to the SOW. In the event that the Settling Defendants fail to take appropriate response action as required by this Section, and EPA or, as appropriate, the State takes such action instead, the Settling Defendants shall reimburse EPA and the State for all costs of the response action not inconsistent with the NCP pursuant to Section XIX (Reimbursement of Response Costs).

56. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States or the State to take, direct, or order all appropriate action or to seek an order from the Court to protect public health and welfare 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.

XIX. REIMBURSEMENT OF RESPONSE COSTS

57. Within 30 days of the effective date of this Consent Decree, the Settling Defendants shall:

a. Pay to the United States \$418,956.73, in the form of a certified check made payable to "EPA Hazardous Substance Superfund," and referencing "Wasatch Chemical Site--Response Costs," CERCLA Number 8-72, and DOJ Case Number 90-11-2-691, in reimbursement of Past Response Costs. The Settling Defendants shall forward the certified check to Mellon Bank, EPA Region VIII, Attn: Superfund Accounting, Post Office Box 360859M, Pittsburgh, Pennsylvania 15251, or any other such address as EPA may designate in writing, and shall send copies of the check to the United States as specified in Section XXIX (Notices and Submissions) and to Bert Garcia, 8HWM-SR, Remedial Project Manager; Jessie Goldfarb, SRC, Assistant Regional Counsel; and Kelcey Land, 8HWM-SR, Cost Recovery Specialist. The mailing address for Mr. Garcia, Ms. Goldfarb, and Ms. Land is U.S. EPA-Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202-2405.

58. The Settling Defendants shall reimburse the United States for all Future Response Costs not inconsistent with the National Contingency Plan incurred by the United States. Following the end of each calendar year, the United States shall submit to the Settling Defendants a bill for response costs incurred by the United States in connection with this Consent

Decree, together with a copy of a detailed Cost Documentation Monitoring System ("CDMS") report or its equivalent. Such costs shall include, but not be limited to, all direct and indirect response costs incurred by the United States. At the request of the Settling Defendants, EPA will meet with the Settling Defendants prior to the payment due date to respond to Settling Defendants' questions concerning the CDMS. Such meeting, which shall last no longer than one business day, shall be limited to a verbal exchange of information; EPA will produce no cost documentation during, or as a result of, the meeting. The Settling Defendants expressly waive the right to request documentation beyond the CDMS report or its equivalent. The Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 59. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 57.

59. The Settling Defendants may contest payment of any Future Response Costs under Paragraph 58 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XXIX (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In

the event of an objection, the Settling Defendants shall within the 30-day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 57. Simultaneously, the Settling Defendants shall establish an interest bearing escrow account in a bank duly chartered in the State of Utah and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in Section XXIX (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XXII (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Defendants shall direct the escrow holder to remit the escrowed monies (with accrued interest) to the United States in the manner described in Paragraph 57. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall direct the escrow holder to remit payment for that portion of the costs (plus associated accrued interest) for which they did not prevail to

the United States in the manner described in Paragraph 57; the Settling Defendants will be disbursed the balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

60. In the event that the payments required by Paragraph 57 are not made within 30 days of the effective date of this Consent Decree or the payments required by Paragraph 58 are not made within 30 days of the Settling Defendants' receipt of the bill, the Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607. The interest on Past Response Costs shall begin to accrue 30 days after the effective date of this Consent Decree. The interest on Future Response Costs shall begin to accrue on the date of the Settling Defendants' receipt of the bill for same. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of the Settling Defendants' failure to make timely payments under this Section.

61. a. Within 30 days of the effective date of this Consent Decree, the Settling Defendants shall pay to the State \$93,440.00 for past response costs incurred by the State, in the form of a check made payable to "Utah Hazardous Substances Mitigation Fund" and referencing this Consent Decree. Also

within 30 days of the effective date of this Consent Decree, the Settling Defendants shall pay to the State \$155,000.00 for future response costs which may be incurred by the State for State oversight of RD/RA for the Wasatch Chemical Site, in the form of a check made payable to "Hazardous Substances Mitigation Fund" and referencing this Consent Decree. The Settling Defendants shall forward the checks to State of Utah, Division of Environmental Response and Remediation, Department of Environmental Quality, 1950 West North Temple, Salt Lake City, Utah 84114-4840. In addition, the Settling Defendants shall provide a maximum of \$5,000.00 in in-kind services for State travel expenses, including air fare and hotel costs, if so requested by the State.

b. The State agrees to accept the amounts specified in this Paragraph as full reimbursement for: (1) all past response costs incurred by the State; and (2) all future response costs which may be incurred by the State for oversight of Remedial Design. Response costs incurred by the State and paid for using EPA funds pursuant to a Cooperative Agreement between EPA and the State shall be considered response costs incurred by the United States and not response costs incurred by the State.

c. Except as provided in Subparagraph d, below, the Settling Defendants agree that the fixed sum of \$93,440.00 represents the limit of the Settling Defendants' obligation to the State with respect to any and all past response costs incurred by the State and the fixed sum of \$155,000.00, plus

\$5,000 in in-kind services, represent the limit of the Settling Defendants' obligation to the State with respect to any and all future response costs which may be incurred by the State in connection with the State's oversight of Remedial Design under this Consent Decree. Future response costs which may be incurred in connection with the State's oversight of Remedial Design under this Consent Decree shall include, but not be limited to, any and all costs incurred by the State relating to drafting interagency, enforcement and/or cooperative agreements with EPA relating to Remedial Design for the Site; review of draft and final versions of the Remedial Design Work Plan, the Additional Studies Work Plan, the Sampling and Analysis Plan, the Quality Assurance Plan, the Health and Safety Plan, the Additional Studies and Design Basis Report, the Preliminary Design Report, the Construction Quality Assurance Plan, the Groundwater Monitoring Plan, the Remedial Action Operation Plan, O & M Updates to the Remedial Action Operation Plan, the Pre-Final Design Report, and the Final Design Report; oversight of all field investigative activities, including field inspections, collection and analysis of samples, laboratory analytical costs, QA/QC audits and review of chain of custody procedures; review of progress reports; all community relations activities; all meetings involving the State and the Settling Defendants, the other potentially responsible parties or other interested parties; and any other activities or tasks related to or in any way associated with preparation of the Remedial Design for the Site pursuant to this Consent Decree.

d. State response costs associated with any additional response actions taken under Section VIII (Additional Response Actions) shall be paid pursuant to Paragraph 62 and are not subject to the limitations in this Paragraph. In addition, the following costs incurred by the State shall be paid pursuant to Paragraph 62 and are not subject to the limitations in this Paragraph, whether or not they are considered associated with any additional response actions taken under Section VIII (Additional Response Actions): (1) costs associated with oversight and/or response actions associated with ground water contamination underlying the northern portion of the Steeico property; and (2) costs associated with oversight of the performance by the Settling Defendants of any new treatability studies required by a modification of the ROD.

e. Settlement of State response costs pursuant to this Paragraph shall be pursuant to 19-6-325, Utah Code Annotated. The State shall use the monies that the Settling Defendants shall pay to the Utah Hazardous Substances Mitigation Fund for reimbursement of future response costs which may be incurred by the State for State oversight of Remedial Design as specified in this Paragraph. Once State oversight of Remedial Design has been completed, any remaining monies shall be considered a voluntary contribution pursuant to Section 19-6-307(2)(a) and may be used for any purpose allowed by law. To the extent that DEQ, at its discretion, determines that it will use, to pay costs of oversight of Remedial Design, all or any portion of the

\$93,440.00 that the Settling Defendants shall pay to the Utah Hazardous Substances Fund for reimbursement of past response costs incurred by the State, that payment shall be made pursuant to 19-6-325, Utah Code Annotated. Any remainder shall be considered a voluntary contribution pursuant to Section 19-6-307(2)(a) and may be used for any purpose allowed by law.

62. a. The Settling Defendants shall reimburse the State for all future response costs which may be incurred by the State not inconsistent with the NCP and which may be incurred in connection with the State's oversight of Remedial Action or with additional response actions taken under Section VIII (Additional Response Actions). Following the end of each calendar year, the State will submit to the Settling Defendants a bill for such response costs incurred by the State, together with supporting documentation. Such costs will include, but not be limited to, all direct and indirect costs incurred by the State relating to the State's oversight of Remedial Action or of additional response actions taken under Section VIII (Additional Response Actions). Such costs will not include those costs specified in Paragraph 61. The Settling Defendants shall make all payments within 30 days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Subparagraph b, below. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 61.a.

b. The Settling Defendants may contest payment of any

future response costs under Subparagraph a, above, if they determine that the State has made an accounting error, if they determine that the cost is not one subject to Subparagraph a, above, or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and shall be sent to the State pursuant to Section XXIX (Notices and Submissions). Any such objection shall specifically identify the contested future response cost and the basis for objection. In the event of an objection, the Settling Defendants shall within the 30-day period pay all uncontested future response costs to the State in the manner described in Paragraph 61.a, and shall initiate the dispute resolution procedures in Paragraph 81. If the State prevails in the dispute, the Settling Defendants shall pay the contested costs to the State in the manner described in Paragraph 61.a (plus interest accrued at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607, for the period beginning 30 days after the State submitted a bill and ending on the date of payment of the contested costs). If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay to the State those portions of the contested costs for which they did not prevail in the manner described in Paragraph 61.a (plus interest accrued at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607, for the period beginning 30 days after the State submitted a bill and ending on

the date of payment of the contested costs). The dispute resolution procedures set forth in this Paragraph in conjunction with Paragraph 81 shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the State for its future response costs.

c. Within 30 days of a written request from either the State or the Settling Defendants, those Parties shall meet to attempt negotiation of a lump sum settlement for those costs specified in Subparagraph a, above.

63. In the event that the payments required by Paragraphs 61 and 62 are not made within the time periods specified in those Paragraphs, the Settling Defendants shall pay interest on the unpaid balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607. The interest on payments required by Paragraph 61 shall begin to accrue 30 days after the effective date of the Consent Decree. The interest on payments required by Paragraph 62 shall begin to accrue 30 days after the date of the State's bill to the Settling Defendants. Payments made under this Paragraph shall be in addition to such other remedies or sanctions available to the State by virtue of the Settling Defendants' failure to make timely payments under this Section.

XX. INDEMNIFICATION AND INSURANCE

64. Neither the United States nor the State assumes any liability by entering into this Consent Decree or by virtue of any designation of the Settling Defendants as EPA's authorized

representatives under Section 104(e) of CERCLA, 42 U.S.C. Section 9604(e). The 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, acts or omissions of the 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 the Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. Section 9604(e). Furthermore, the 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 and the State based on acts or omissions of the 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 the Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States

or the State.

65. The Settling Defendants waive all claims 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 the 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, the 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 the 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.

66. No later than 15 days after the effective date of this Consent Decree, the Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 53.b of Section XVII (Certification of Completion) comprehensive general liability and automobile insurance with limits of \$2 million, combined single limit naming as insureds the United States and the State. In addition, for the duration of this Consent Decree, the 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 the Settling Defendants pursuant to this Consent Decree. Prior to commencement of the Work under this Consent Decree, the Settling Defendants shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. In the event the Settling Defendants change or modify any insurance policy, a revised certificate of insurance and copy of the policy shall be submitted to EPA and the State within 30 days of the change or modification. If the 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, the Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XXI. FORCE MAJEURE

67. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants or of any entity controlled by the Settling Defendants, including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to

anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work, or a failure to attain the Performance Standards.

68. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall orally notify EPA's Project Manager or, in his or her absence, EPA's Alternate Project Manager or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region VIII, within 48 hours of when the Settling Defendants first knew or should have known that the event might cause a delay. Following the same procedure, the Settling Defendants shall also promptly orally notify the State's Project Manager or the State's Alternate Project Manager (in the event of the unavailability of the State's Project Manager). Within 10 days thereafter, the Settling Defendants shall provide in writing to EPA and the State: (1) the reasons for the delay; (2) the anticipated duration of the delay; (3) all actions taken or to be taken to prevent or minimize the delay; (4) a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; (5) the Settling Defendants' rationale

for attributing such delay to a force majeure event if they intend to assert such a claim; and (6) a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health or welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude the Settling Defendants from asserting any claim of force majeure for that event. The Settling Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

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

event.

70. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XXII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, the Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that: (1) the delay or anticipated delay has been or will be caused by a force majeure event; (2) the duration of the delay or the extension sought was or will be warranted under the circumstances; (3) best efforts were exercised to avoid and mitigate the effects of the delay; and (4) the Settling Defendants complied with the requirements of Paragraphs 67 and 68, above. If the Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by the Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XXII. DISPUTE RESOLUTION

71. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes among EPA, the State, and the Settling Defendants, not including disputes between EPA and the State, arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

72. Any dispute among EPA, the State, and the Settling Defendants, not including a dispute between EPA and the State, which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 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.

73. a. In the event that the Parties cannot resolve a dispute, except for disputes solely between the State and the Settling Defendants or solely between EPA and the State, by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, 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 the Settling Defendants.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA will serve on 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.

c. If there is a disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraphs 74 or 75, the parties to the dispute shall follow the procedures set forth in the Paragraphs determined by EPA to be applicable. If the 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 74 and 75. However, where it is specified in this Consent Decree that either Paragraph 74 or 75 applies to a dispute, neither the State nor the Settling Defendants shall dispute the applicability of those Paragraphs.

74. 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: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by 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 Paragraph 73 and this Paragraph. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute. Those portions of the administrative record which are non-privileged will be made available to all parties to the dispute for review and copying at EPA's offices in Denver, Colorado.

b. The Director of the Waste Management Division, EPA Region VIII, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 74.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 74.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 74.b shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, the Settling Defendants shall have the burden of demonstrating that the decision of the Waste Management 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 74.a.

75. 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 Settling Defendants' Statement of Position submitted pursuant to Paragraph 73, the Director of the Waste Management Division, EPA Region VIII, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the Parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' notice of judicial appeal.

b. Notwithstanding Paragraph M of Section I (Background), judicial review of any dispute governed by this

Paragraph shall be governed by applicable provisions of law.

76. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the 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 the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XXIII (Stipulated Penalties).

77. With respect to disputes between EPA and the State, the final decision issued by EPA pursuant to Paragraph 6 shall be reviewable by this Court, provided that the State has filed a notice of judicial appeal with the Court within 10 days of receipt of EPA's final decision and simultaneously served a copy of that notice upon the United States. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by EPA and the State to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the State's notice of judicial appeal.

78. With respect to disputes between EPA and the State, judicial review 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: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of response actions performed pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute regarding the validity of the ROD's provisions. In proceedings on any dispute governed by this Paragraph, the State shall have the burden of demonstrating that the decision of the Regional Administrator, EPA Region VIII, is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on EPA's administrative record.

79. With respect to disputes between EPA and the State, judicial review 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. Notwithstanding Paragraph M of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

80. With respect to disputes between EPA and the State, judicial review for disputes relating to Section 121(f)(2)(B) of CERCLA, 42 U.S.C. Section 9621(f)(2)(B), shall be governed by the substantial evidence standard.

81. a. In the event that a dispute arises solely between the State and the Settling Defendants which those Parties are unable to resolve informally, the State shall provide written notice of the dispute to EPA. Unless EPA notifies the State within 10 days that it is invoking dispute resolution procedures under Paragraph 6, the procedures of this Paragraph shall apply.

b. The State shall issue a final decision, which shall be reviewable by this Court. In order to invoke such judicial review, Settling Defendants shall file a notice with this Court within 20 days of receipt of the State's final decision. The notice shall include a description of the matter in dispute, the efforts made by the State and the Settling Defendants to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved in order to ensure orderly implementation of this Consent Decree. The State may file a response to Settling Defendants' notice.

c. The standard of review for disputes which are reviewed by the Court pursuant to Subparagraph b, above, shall be governed by applicable provisions of law.

82. The Settling Defendants may stop Work upon receipt of joint written notification from EPA and the State of any dispute between EPA and the State relating to Work to be performed, or

being performed, by the Settling Defendants. The Settling Defendants must commence or recommence Work, if stopped, within 3 days of written notification by the Regional Administrator, EPA Region VIII, or his designee, of his final decision in dispute resolution, or, if the dispute is resolved before a final decision is issued by the Regional Administrator, within 3 days of receipt of joint notification of same from EPA and the State. However, there shall be no stoppage of Work pending judicial review of that dispute, unless EPA, in its unreviewable discretion, agrees otherwise.

XXIII. STIPULATED PENALTIES

83. The Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraph 84 to the United States and the State for failure to comply with the requirements of this Consent Decree specified below, unless excused under Paragraph 17 or Section XXI (Force Majeure). "Compliance" by the Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

84. The following stipulated penalties shall be payable per violation per day to the United States and the State for any noncompliance identified below:

a. Tier I Noncompliance.

Noncompliance shall mean the failure to submit timely or adequate versions of each of the following final documents, or failure to perform in a timely or adequate manner each of the following activities:

- (1) Final Remedial Design Work Plan;
- (2) Final Additional Studies and Design Basis Report;
- (3) Final Remedial Design Report;
- (4) Final Remedial Action Work Plan;
- (5) Ground Water Construction Completion Report;
- (6) Written report as specified in Paragraph 53;
- (7) Written report as specified in Paragraph 54;
- (8) Provision of access to the United States or the State and their authorized representatives to property owned or controlled by the Settling Defendants;
- (9) Performance of additional response actions as required by Section VIII (Additional Response Actions) of this Consent Decree;
- (10) Conduct of the studies, investigations, and other response actions required by Section IX (U.S. EPA Periodic Review) of this Consent Decree;
- (11) Commencement of on-site Remedial Design or

Remedial Action activities without EPA approval;

(12) Implementation of Remedial Design;

(13) Implementation of Remedial Action; and

(14) Attainment of the Performance Standards,

with the exception that there will be no

Stipulated Penalties imposed on the

Settling Defendants if the requirement

that the Action Level Performance Standards

for Ground Water identified in Paragraph

17.a(1) and/or Alternative Performance

Standards associated with this requirement be

attained and met continuously for 5

consecutive quarters is determined by EPA

pursuant to Paragraph 17 to be technically

impracticable from an engineering

perspective, despite the "best efforts,"

as that term is defined in Paragraph 17,

of the Settling Defendants. Furthermore,

there shall be no stipulated penalties

imposed on the Settling Defendants if the

requirement that the 50 Percent Reduction

Performance Standard for Ground Water

identified in Paragraph 17.a(2) be attained

is determined by EPA pursuant to Paragraph 17

to be technically impracticable from an

engineering perspective, despite the best efforts of the Settling Defendants. Finally, with respect to remediation of soils, sludges, and Dioxin Removal Wastes, there shall be no stipulated penalties imposed on the Settling Defendants if the Settling Defendants fail to attain the Performance Standards identified in Paragraph 16.a(2)(a) and (b), despite the best efforts of the Settling Defendants to implement fully the remedial measures required by this Consent Decree and the SOW.

<u>Penalty Per Violation Per Day</u>	<u>Period of Non-Compliance</u>
\$5,000	1st through 10th day
\$15,000	11th through 20th day
\$20,000	21st day and each day thereafter

b. Tier II noncompliance.

Noncompliance shall be defined as:

- (1) Failure to submit timely or adequate draft or revised versions of documents listed in Tier I, or failure to submit timely or adequate versions of draft, revised, final, or updated versions of documents required by this Consent Decree or the SOW not listed in Paragraph 84(a); and/or
- (2) Failure to perform in accordance with any other requirements of this Consent Decree.

<u>Penalty Per Violation Per Day</u>	<u>Period of Non-Compliance</u>
\$5,000	1st through 10th day
\$7,500	11th through 20th day
\$10,000	21st day and each day thereafter

85. EPA may provide the Settling Defendants with a cure period to correct any deficiency in any deliverable or Work. No stipulated penalties shall accrue during a cure period. The decision to grant a cure period and the length of the cure period are within the sole discretion of EPA and neither issue is subject to dispute resolution.

86. 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. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

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

88. All penalties owed to the United States and the State

under this Section shall be shared equally between the United States and the State and shall be due and payable within 30 days of the Settling Defendants' receipt from EPA and/or the State of a demand for payment of the penalties, unless the Settling Defendants invoke the Dispute Resolution procedures under Section XXII (Dispute Resolution). Fifty percent of all payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to Mellon Bank, EPA Region VIII, Attn: Superfund Accounting, Post Office Box 360859M, Pittsburgh, Pennsylvania 15251, or any other such address as EPA may designate in writing, and shall reference "Wasatch Chemical Site--Stipulated Penalties", CERCLA Number 72(01), and DOJ Case Number 90-11-2-691. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXIX (Notices and Submissions). Fifty percent of all payments under this Section shall be paid by check made payable to "Utah Department of Environmental Quality," and shall be mailed to State of Utah, Division of Environmental Response and Remediation, 1950 West North Temple, Salt Lake City, Utah 84114-4840.

89. Neither the invocation of dispute resolution procedures under Section XXII (Dispute Resolution) nor the payment of penalties shall alter in any way the Settling Defendants' obligation to complete the performance of the Work, unless so specified in the final decision or settling documents of the

dispute resolution process.

90. Penalties shall continue to accrue as provided in Paragraph 86 during any dispute resolution period, but need not be paid until the following:

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

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

c. If this Court's decision is appealed by any Party, the Settling Defendants shall pay all accrued penalties 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 and the State or to the Settling Defendants to the extent that they prevail.

91. a. If the Settling Defendants fail to pay stipulated penalties when due, the United States or the State may institute proceedings to collect the penalties, as well as late charges and interest. The Settling Defendants shall pay interest on the

unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. Section 9607.

b. Nothing in this Section 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 the Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, 42 U.S.C. Section 9622(1).

92. No payments made under this Section shall be tax deductible for federal or State tax purposes.

XXIV. COVENANTS NOT TO SUE BY PLAINTIFFS

93. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of this Consent Decree, and except as specifically provided in Paragraphs 94, 95, and 97 of this Section, the United States covenants not to sue or to take administrative action against the Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. Sections 9606 and 9607(a), relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 57 of Section XIX (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action by EPA

pursuant to Paragraph 53.b of Section XVII (Certification of Completion). These covenants not to sue are conditioned upon the complete and satisfactory performance by the Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

94. 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 the Settling Defendants (1) to perform further response actions relating to the Site, or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action pursuant to Section XVII (Certification of Completion):

- (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 these previously unknown conditions or this information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

95. 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 the Settling Defendants (1) to perform further response actions relating to the Site, or (2) to reimburse the United States for additional costs of response if, 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 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.

96. For purposes of Paragraph 94, the information and the conditions known to EPA shall include only that information and those conditions set forth in the ROD and the administrative record supporting the ROD. For purposes of Paragraph 95, the information and the conditions known to EPA shall include only that information and those conditions set forth in the ROD, the administrative record supporting the ROD, and any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

97. General reservations of rights. The covenants not to

sue set forth in this Section do not pertain to any matters other than those expressly specified in Paragraphs 93 and 100. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against the Settling Defendants with respect to all other matters, including, but not limited to, the following:

- a. claims based on a failure by the 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 Materials outside of the Site;
- c. liability for damages for injury to, destruction of, or loss of natural resources;
- d. liability for response costs that have been or may be incurred by all federal agencies which are trustees for natural resources and which have spent, or may in the future spend, funds relating to the Site, and/or by the State Natural Resource Trustee;
- e. criminal liability;
- f. liability for violations of federal or State law which occur during or after implementation of the Remedial Action; and
- g. liability, if any, arising from ground water contamination on the northern portion of the

Steeico property, unless such ground water contamination is remediated by the Settling Defendants pursuant to this Consent Decree.

98. In the event EPA determines that the Settling Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. The Settling Defendants may invoke the procedures set forth in Section XXII (Dispute Resolution) to dispute EPA's determination that the Settling Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that the Settling Defendants shall pay pursuant to Section XIX (Reimbursement of Response Costs).

99. 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.

100. a. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendants under the terms of the Consent Decree, and the Settling Defendants' Covenant Not to Sue, and except as specifically provided in this Paragraph and Paragraphs 97, 101,

and 102, the State covenants not to sue or take administrative action against the Settling Defendants pursuant to Chapters 5 and 6 (Part 3) of Title 19, Utah Code Annotated, Section 7002 of RCRA, 42 U.S.C. Section 6972, or Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a), relating to the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by the State of the payments required by Paragraph 61 of Section XIX (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon the State's concurrence with the Certification of Completion of the Remedial Action by EPA pursuant to Paragraph 53.b of Section XVII (Certification of Completion). If the State fails to invoke judicial review within 10 days of its receipt of EPA's Certification of Completion, the State shall be considered to have concurred with the Certification. In the event the State invokes judicial review and this Court upholds EPA's Certification of Completion, the State shall be considered to have concurred with the Certification. These covenants not to sue are conditioned upon the complete and satisfactory performance by the Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

b. The State agrees that entry of this Consent Decree shall resolve the existing claims it has against the Settling Defendants in Utah Department of Health v. Peter Ng, et al.,

Civil Action No. 86-C-0023G.

c. In the event that a claim is asserted against the State or any of its employees relating to the Site, the State's covenants not to sue shall not apply to any claims under Sections 107 or 113 of CERCLA, 42 U.S.C. Sections 9607 or 9613, which the State may have against the Settling Defendants or any other person, provided that the State's claims arise from, and are based upon, the new claim asserted against the State.

101. 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 the Settling Defendants (1) to perform further response actions relating to the Site; or (2) to reimburse the State for additional costs of response if, prior to the State's concurrence with EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 53.b:

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

(ii) information, previously unknown to the State, is received, in whole or in part,

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

102. 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 the Settling Defendants (1) to perform further response actions relating to the Site; or (2) to reimburse the State for additional costs of response if, after the State's concurrence in EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 53.b:

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

(ii) information, previously unknown to the State, is received, in whole or in part,

and 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.

103. For purposes of Paragraph 101, the information and the conditions known to the State shall include only that information and those conditions set forth in the ROD and the administrative record supporting the ROD. For purposes of Paragraph 102, the information and the conditions known to the State shall include only that information and those conditions set forth in the ROD, the administrative record supporting the ROD, and any information received by the State pursuant to the requirements of this Consent Decree prior to the State's concurrence with EPA's Certification of Completion of the Remedial Action pursuant to

Paragraph 53.b. The State's concurrence with the Certification of Completion shall be as provided in Paragraph 100.a for purposes of this Paragraph and Paragraphs 101 and 102.

XXV. COVENANTS BY THE SETTLING DEFENDANTS

104. The Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. Section 9507) through Sections 106(b)(2), 111, 112, or 113 of CERCLA, 42 U.S.C. Sections 9606(b)(2), 9611, 9612, or 9613, or any other provision of law, any claim against the United States, including any department, agency, or instrumentality of the United States under CERCLA Section 107 or 113, 42 U.S.C. Section 9607 or 9613, related to the Site, or any claims arising out of response activities at the Site. However, the Settling Defendants reserve the right to take, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Settling Defendants' plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. 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. Section 9611, or 40

C.F.R. Section 300.700(d).

105. a. Except as specifically provided in Subparagraphs c and d, below, the Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the State of Utah with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Utah Hazardous Substance Mitigation Fund, any claim against the State of Utah, including any department, agency, or instrumentality of the State of Utah under Section 107 or 113 of CERCLA, 42 U.S.C. Section 9607 or 9613, related to the Site, or any claims arising out of response activities at the Site or any counterclaims filed in Utah Department of Health v. Peter Ng, et al., Civil Action No. 86-C-0023G.

b. The Settling Defendants affirm that they have received assignment of all existing or certain potential claims against the State by the Defendants and the Third-Party Defendants in Utah Department of Health v. Peter Ng, et al., Civil Action No. 86-C-0023G. The Settling Defendants agree that entry of this Consent Decree shall resolve the existing claims in that case and covenant not to assert any claims against the State of Utah pursuant to an assignment of claim from any Defendant or Third-Party Defendant in that case.

c. The Settling Defendants reserve the right to take, and this Consent Decree is without prejudice to, actions against the State of Utah based on negligent actions taken directly by

the State of Utah (not including oversight of, or approval of, or concurrence with respect to, the Settling Defendants' plans or activities) that occur after the date of Settling Defendants' signature to this Consent Decree, and that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

d. In the event that a claim, including any claim for State natural resource damages, is asserted against the Settling Defendants relating to the Site, the Settling Defendants' covenant not to sue under this Paragraph shall not apply to any claims under Sections 107 or 113 of CERCLA, 42 U.S.C. Sections 9607 or 9613, which the Settling Defendants may have against the State of Utah or any other person, not including the United States, provided that the Settling Defendants' claims arise from, and are based upon, the new claim asserted against the Settling Defendants. However, this provision shall not affect in any way the covenants not to sue provided to the United States by the Settling Defendants pursuant to Paragraph 104 of this Section.

XXVI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

106. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution),

defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

107. With regard to claims for contribution against Settling Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. Section 9613(f)(2).

108. The Settling Defendants agree, that with respect to any suit or claim for contribution brought by them for matters addressed by this Consent Decree, they will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim, unless EPA agrees otherwise. The Settling Defendants also agree, that with respect to any suit or claim for contribution brought against them for matters addressed by this Consent Decree, they will notify in writing the United States and the State within 10 days of service of the complaint on them and within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any Order from a court setting a case for trial.

109. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other

appropriate relief relating to the Site, the Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States 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 XXIV (Covenants Not to Sue by Plaintiffs).

XXVII. ACCESS TO INFORMATION

110. The Settling Defendants shall provide to EPA and the State, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. The 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.

111. a. The Settling Defendants may assert business confidentiality claims covering part or all of the documents or

information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7), and 40 C.F.R. Section 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified the Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, 42 U.S.C. Section 9604(e)(7), the public may be given access to such documents or information without further notice to the Settling Defendants unless the issue of business confidentiality is being resolved under Section XXII (Dispute Resolution), in which case the documents or information shall be treated as confidential until final resolution of the issue.

b. The Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or

information; and (6) the privilege asserted by the Settling Defendants. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree, and which are required to be submitted to the United States, EPA, or the State, shall be withheld on the grounds that they are privileged.

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

XXVIII. RETENTION OF RECORDS

113. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 54.b of Section XVII (Certification of Completion), the Settling Defendants shall preserve and retain all records and documents now in their possession or control or which come into their possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 54.b of Section XVII (Certification of Completion), the Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the

Work.

114. At the conclusion of this document retention period, the Settling Defendants shall notify the United States and the State at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States or the State, the Settling Defendants shall deliver any such records or documents to EPA or the State. The Settling Defendants may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by the Settling Defendants. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree, and which are required to be submitted to the United States, EPA, or the State, shall be withheld on the grounds that they are privileged.

115. The Settling Defendants hereby certify that they have not altered, mutilated, discarded, destroyed, or otherwise disposed of any final records, documents, or other information, except drafts of such records, documents, or other information,

relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. Sections 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. Section 6927.

XXIX. NOTICES AND SUBMISSIONS

116. 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. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the State, and the Settling Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-2-691

and

Director, Waste Management Division
United States Environmental Protection Agency
Region VIII
999 18th Street, Suite 500

Denver, Colorado 80202-2405

As to EPA:

Bert Garcia (8HWM-SR)
EPA Project Manager - Wasatch Chemical Site
United States Environmental Protection Agency
Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2405

As to the State:

Duane Mortensen
State Project Manager
State of Utah
Department of Environmental Quality
Division of Environmental Response
and Remediation.
288 North 1460 West
Salt Lake City, Utah 84114-4840

As to the Settling Defendants:

Roland Gow
Entrada Industries, Inc.
180 East 100 South
Salt Lake City, Utah 84102

XXX. EFFECTIVE DATE

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

XXXI. RETENTION OF JURISDICTION

118. This Court retains jurisdiction over both the subject matter of this Consent Decree and the 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 XXII (Dispute Resolution) hereof.

XXXII. APPENDICES

119. 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 a map of the Site.

XXXIII. COMMUNITY RELATIONS

120. The Settling Defendants shall propose to EPA their participation in the Community Relations Plan to be developed by EPA and the State. EPA will determine the appropriate role for the Settling Defendants under the Plan. The 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, the 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.

XXXIV. MODIFICATION

121. Schedules for completion of the Work may be modified by agreement of the United States and the Settling Defendants. All such modifications shall be made in writing.

122. No material modifications shall be made to the SOW without written notification to and written approval of the United States, the State, the Settling Defendants, and the Court.

Modifications to the SOW that do not materially alter those documents may be made by written agreement among EPA, the State, and the Settling Defendants. No oral modification of this Consent Decree or documents incorporated herein shall be effective.

123. Nothing in this Section shall be deemed to alter the Court's power to supervise or modify this Consent Decree.

XXXV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

124. 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. Section 9622(d)(2), and 28 C.F.R. Section 50.7. If determined to be appropriate, entry of this Consent Decree by the Court shall be sought as soon as practicable after the expiration of the public notice and comment period provided with respect to this Consent Decree. 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. If the United States withdraws or withholds consent under these circumstances, the Settling Defendants shall be notified and all Work required under the Consent Decree and SOW may be halted. The Settling Defendants consent to the entry of this Consent Decree without further notice.

125. 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.

XXXVI. COUNTERPARTS

126. This Consent Decree may be executed and delivered in counterparts, each of which when executed and delivered shall be deemed to be an original. Such counterparts constitute parts of one and the same document.

XXXVII. SIGNATORIES/SERVICE

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

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

129. The Settling Defendants shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. The Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of

Civil Procedure and any applicable local rules of this Court,
including, but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 19__.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States, et al. v. Entrada Industries, Inc., et al. relating to the Wasatch Chemical Superfund Site.

FOR THE UNITED STATES OF
AMERICA

Date: _____

Barry M. Hartman
Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

J. Jared Snyder
Environmental Enforcement
Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Glen R. Dawson
Assistant United States Attorney
Central District of Utah
U.S. Department of Justice
350 South Main Street, Room 476
Salt Lake City, Utah 84101

Jack W. McLean, Acting
James J. Scherer

Regional Administrator
U.S. Environmental Protection
Agency
Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2405

Jessie A. Goldfarb
Jessie A. Goldfarb
Assistant Regional Counsel
U.S. Environmental Protection
Agency
Region VIII
999 18th Street, Suite 500
Denver, Colorado 80202-2405

United States, et al. v. Entrada Industries, Inc., et al.
Consent Decree Signature Page

FOR THE STATE OF UTAH

Date: 30 Sept 91



Kenneth L. Alkema
Executive Director
Department of Environmental
Quality

288 North 1460 West
Salt Lake City, Utah 84116

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of *United States, et al. v. Entrada Industries, Inc., et al.* relating to the Wasatch Chemical Superfund Site.

FOR ENTRADA INDUSTRIES, INC.

Date: September 30, 1991

By: 

R. D. Cash
Chairman of the Board
180 East First South
Salt Lake City, Utah 84111

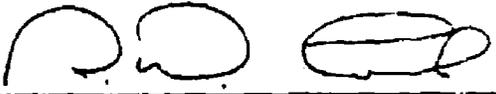
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10/2/91*

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

Name: Ray G. Groussman
Title: Vice President & General Counsel, Questar Corporation
Address: P. O. Box 11150, Salt Lake City, UT 84147

FOR MOUNTAIN FUEL SUPPLY COMPANY, INC.

Date: September 30, 1991

By: 

R. D. Cash
Chairman of the Board
180 East First South
Salt Lake City, Utah 84111

*copy
cut
10/2/91*

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

Name: Ray G. Groussman
Title: Vice President & General Counsel, Questar Corporation
Address: P. O. Box 11150, Salt Lake City, UT 84147

FOR QUESTAR CORPORATION

Date: September 30, 1991

By: 

*ckg
Cof
RGG*

R. D. Cash
Chairman of the Board
President & Chief Executive Officer
180 East First South
Salt Lake City, Utah 84111

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

Name: Ray G. Groussman

Title: Vice President & General Counsel, Questar Corporation

Address: P. O. Box 11150, Salt Lake City, UT 84117