

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION**

UNITED STATES OF AMERICA

Plaintiffs,

v.

LOCKHEED MARTIN
CORPORATION, et. al.,

Defendants.

CIVIL ACTION NO. - 4:02-CV-146

AMENDED CONSENT DECREE

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I. BACKGROUND

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

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Green River Superfund Site in Maceo, Kentucky, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) (“NCP”).

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA; 42 U.S.C. § 9621 (f)(1)(F), EPA notified the Commonwealth of Kentucky (the “Commonwealth” or “State”) on or around August 10, 2001, 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 Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of Interior no later than August 10, 2001, 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.

E. The Defendants allege that an agency (the “U.S. Coast Guard”) of the United States (the “Settling Federal Agency”) is a potentially responsible party (“PRP”) under Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613.

F. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment. The Settling Federal Agency does not admit any liability arising out of the transactions or occurrences alleged in any counterclaim asserted by the Settling Defendants.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on August 30, 1990, 55 Fed. Reg. 169.

H. In response to a release or a substantial threat of a release-of hazardous substances at or from the Site, certain PRPs at the Site (the “Performing Parties under the UAO”) in October 1991 initiated a Remedial Investigation and Feasibility Study (“RI/FS”) for the Site pursuant to 40 C.F.R. § 300.430.

I. The Performing Parties under the UAO completed a Remedial Investigation (“RI”) Report and Feasibility Study (“FS”) report on July 14, 1994. The groundwater component of the RI/FS was completed in 1999.

J. On December 14, 1994, EPA issued a Record of Decision (“ROD”) for Operable Unit 1 (“OU-1”). The Performing Parties under the UAO are performing the OU-1 remedy

pursuant to a Unilateral Administrative Order (“UAO”) issued by EPA on March 29, 1996, EPA Docket No. 96-06-C.

K. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 19, 1994, and in May 2000 for Operable Unit 2 (“OU-2”) in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

L. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision (“ROD”), executed on August 23, 2000, on which the State had a reasonable opportunity to review and comment. The ROD includes EPA’s explanation for any significant differences between the final plan and the proposed plan as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

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

N. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD and the Work to be performed by the Settling Performing Parties shall constitute a response action taken or ordered by the President.

O. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree, as amended, has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest. NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

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

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their heirs, successors and assigns. Except as provided by a written amendment signed by all Parties and approved and entered by the Court, any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Performing Parties shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Performing Party with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Performing Parties or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Performing Parties 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 Performing Parties within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

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

“BFIKY” shall mean Browning-Ferris Industries of Kentucky, Inc.

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

“Consent Decree” shall mean this Decree, as amended, and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

“Day” shall mean a calendar day unless expressly stated to be a working day.

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

“Effective Date” shall be the effective date of this Consent Decree as provided in Paragraph 106.

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

“Future Oversight Costs” shall mean that portion of Future Response Costs that EPA incurs in monitoring and supervising Settling Performing Parties’ performance of the Work to determine whether such performance is consistent with the requirements of this Consent Decree, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Consent Decree, as well as costs incurred in overseeing implementation of the Work; however, Oversight Costs do not include, *inter alia*: the costs incurred by the United States pursuant to Sections VII (Remedy Review), IX (Access and Institutional Controls), XV (Emergency Response), and Paragraph 87 of Section XXI (Work Takeover), or the costs incurred by the United States in enforcing the terms of this Consent Decree, including all costs

incurred in connection with Dispute Resolution pursuant to Section XIX (Dispute Resolution) and all litigation costs.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement institutional controls including, but not limited to, the amount of just compensation), XV, and Paragraph 87 of Section XXI. Future Response Costs shall include all costs incurred after February 15, 2002.

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

“KDEP” shall mean the Kentucky Department for Environmental Protection and any successor departments or agencies of the State.

“Matters Addressed” in this Consent Decree shall mean all response actions taken or to be taken, and all response costs incurred or to be incurred by the United States or any other person with respect to the Site. The “Matters Addressed” in this Consent Decree do not include those response costs or those response actions as to which the United States has reserved its

rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event the United States asserts rights against the Settling Defendants coming within the scope of such reservations.

“Municipal sewage sludge” shall mean any solid, semi-solid, or liquid residue removed during the treatment of municipal waste water or domestic sewage, and may include residue removed, all or in part, during the treatment of wastewater from manufacturing or processing operations, provided that such residue has essentially the same characteristics as residue removed during the treatment of domestic sewage.

“Municipal solid waste” shall mean household waste and solid waste collected from non-residential sources that is essentially the same as household waste. While the composition of such wastes may vary considerably, municipal solid waste generally is composed of large volumes of non-hazardous substances (e.g., yard waste, food waste, glass, and aluminum) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

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

“Natural Resources” shall have the meaning provided in Section 101(16) of CERCLA, 42 U.S.C. § 9601(16).

“Natural Resource Damages” means damages, including costs of damages assessment, recoverable under Section 107 of CERCLA for injury to, destruction of, or loss of any and all Natural Resources at the Green River Disposal Landfill Superfund 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 Statements of Work (SOWs).

“Owner Settling Defendant” shall mean the Settling Defendant listed in Appendix M.

“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 Settling Defendants, and Settling Federal Agency.

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section 7.1 of the ROD-1, Sections 7.3 and 7.5 of ROD-2, Section III-B of the SOW-1 and Section III-B of the SOW-2.

“Performing Parties under the UAO” shall mean those Parties identified in Appendix E.

“Plaintiff” shall mean the United States.

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

“Record of Decision for OU-1” or “ROD-1” shall mean the EPA Record of Decision relating to the Operable Unit 1 signed on December 14, 1994, by the Regional Administrator, EPA Region 4, or his/her delegate, and all attachments thereto. ROD-1 is attached as Appendix A.

“Record of Decision for OU-2” or “ROD-2” shall mean the EPA Record of Decision relating to the Operable Unit 2 signed on August 23, 2000, by the Regional Administrator, EPA Region 4, or his/her delegate, and all attachments thereto. ROD-2 is attached as-Appendix B.

“Remedial Action” shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Performing Parties to implement ROD-1 and ROD-2 (the “RODs,”) in accordance with SOW-1 and SOW-2 (the “SOWs”) and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Action for OU-1” shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Performing Parties to implement ROD-1, in accordance with SOW-1 and the Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Action for OU-2” shall mean those activities, except for Operation and Maintenance, to be undertaken by the Settling Performing Parties to implement ROD-2, in accordance with SOW-2 and the Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

“Remedial Design/Remedial Action Work Plan” or “OU-2 Remedial Design/Remedial Action Work Plan” shall mean the documents developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

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

“Settling Defendants” shall mean those Parties identified in Appendix D and Appendix M.

“Settling Federal Agency” shall mean that department, agency, and instrumentality of the United States identified in Appendix H, which is resolving any claims which have been or could be asserted against it with regard to this Site as provided in this Consent Decree.

“Settling Non-Performing Parties” shall mean those Parties identified in Appendix F.

“Settling Performing Parties” shall mean those Parties identified in Appendix G.

“Site” shall mean the Green River Disposal Landfill Superfund Site, located at Kelly Cemetery Road in Maceo, Daviess County, Kentucky, and depicted generally on the map attached as Appendix C. The site is located within the Lewisport, Kentucky - Indiana United States Geological Survey) 7.5 Minute Topographic Quadrangle; its approximate coordinates are 37°53’30” latitude and 86°58’30” longitude.

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

“Statement of Work 1” or “SOW-1” shall mean the statement of work for implementation of the Remedial Design for OU-1, Remedial Action for OU-1, and Operation and Maintenance at the Site, as set forth in Appendix I to this Consent Decree and any modifications made in accordance with this Consent Decree.

“Statement of Work 2” or “SOW-2” shall mean the statement of work for implementation of the Remedial Design for OU-2, Remedial Action for OU-2, and Operation and Maintenance at the Site, as set forth in Appendix J to this Consent Decree and any modifications made in accordance with this Consent Decree.

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

“Unilateral Administrative Order” or “UAO” shall mean that order issued by the United States Environmental Protection Agency on March 29, 1996, EPA Docket No. 96-06-C, attached as Appendix K. The UAO and any requirements under the UAO applicable to the Settling Defendants, as Respondents under the UAO, are incorporated herein by reference.

“United States” shall mean the United States of America, including all of its departments, agencies, and instrumentalities, which includes without limitation EPA, the Settling Federal Agency and any federal natural, resource trustee.

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

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

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Settling Performing Parties; to reimburse response costs of the Plaintiff; to resolve the claims of Plaintiff against Settling Defendants; to resolve the claims that the Settling Performing Parties and Settling Non-Performing Parties have against each other; and to resolve the claims of the Settling Performing Parties and Settling Non-Performing Parties which have been or could have been asserted against the United States with regard to this Site as provided in this Consent Decree.

6. Commitments by Settling Defendants and Settling Federal Agency.

a. Settling Performing Parties shall finance and perform the Work in accordance with this Consent Decree, the RODs, the SOWs, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Performing Parties and approved by EPA pursuant to this Consent Decree. Settling Performing Parties shall also reimburse the United States for Future Response Costs as provided in this Consent Decree. The Settling Federal Agency shall reimburse the Settling Performing Parties for their response costs incurred and to be incurred at the Site as provided in this Consent Decree. Settling Non-Performing Parties shall reimburse the Settling Performing Parties for their response costs incurred and to be incurred at the Site as provided in this Consent Decree.

b. The obligations of Settling Performing Parties to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Performing Parties to implement the requirements of this Consent Decree, the remaining Settling Performing Parties shall complete all such requirements.

c. The requirements of the UAO to perform the Remedial Action for OU-1, described in ROD-1 and the Remedial Design for OU-1 (the "work requirements" as defined in the UAO), are incorporated into and become enforceable under this Consent Decree. The Settling Performing Parties shall perform all remaining work requirements set forth in the UAO pursuant to this Consent Decree. Within fourteen (14) days after the effective date of this Consent Decree, the U.S. EPA agrees to withdraw the UAO only as it applies to Respondents

who are signatories to this Consent Decree. All requirements of the UAO remain in effect as to the Respondents to the UAO who are not signatories to this Consent Decree.

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

8. Permits.

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

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

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

9. Notice to Successors-in-Title.

a. With respect to any property owned or controlled by the Owner Settling Defendant that is located within the Site, within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder's Office or Registry of Deeds or other appropriate office, Daviess County, Commonwealth of Kentucky, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on August 23, 2000, and that potentially responsible parties have entered into a Consent Decree requiring implementation of the remedy. Such notices shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant shall record the notices within 10 days of EPA's approval of the notices. The Owner Settling Defendant shall provide EPA with a certified copy of the recorded notices within 10 days of recording such notices.

b. At least 30 days prior to the conveyance of any interest in property located within the Site including, but not limited to, fee interests, leasehold interests, and mortgage interests, unless the grantee is a Party to this amended Consent Decree, the Owner Settling Defendant conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls), and (iii) any instrument by which an interest in real property has

been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as “restrictive easements”) pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Owner Settling Defendant conveying the interest shall also give written notice to EPA and the Commonwealth of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree, access easements, and/or restrictive easements was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Defendant’s obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of EPA. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING PERFORMING PARTIES

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Performing Parties pursuant to Sections VI (Performance of the Work by Settling Performing Parties), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. If Settling Performing Parties select de

maximis, inc., as their initial Supervising Contractor pursuant to this Consent Decree, EPA hereby does not disapprove that selection. However, if at any time, the Settling Performing Parties propose to change any contractor or wish to select a different initial Supervising Contractor than de maximis, inc., Settling Performing Parties shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994. "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or an authorization to proceed. If Settling Performing Parties propose to change a Supervising Contractor, Settling Performing Parties shall give such notice to EPA and the State and must obtain an authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Performing Parties in writing. Settling Performing Parties shall submit to EPA and the State a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Performing Parties may select any contractor from that list that is not disapproved and shall notify EPA and

the State of the name of the contractor selected within 21 days of EPA's authorization to proceed.

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

11. Remedial Design/Remedial Action.

a. As set forth below, the Settling Performing Parties shall submit to EPA and the State an OU-2 Remedial Design/Remedial Action Work Plan which shall consist of the following: 1) an Institutional Control Plan for implementing the required institutional controls; 2) a Groundwater Monitoring Plan; and schedules for implementing both Plans. Upon its approval by EPA, the Remedial Design/Remedial Action Work Plan for OU-2 and approved schedules shall become incorporated into and become enforceable under this Consent Decree.

b. The Institutional Control Plan shall include the following: 1) a description of the institutional controls to be implemented and their objectives; 2) an overview of the ownership status of the property and status of Green River Disposal, Inc.; 3) an outline of the strategy proposed to accomplish the task of implementing institutional controls; 4) a discussion of the likely barriers to implementation of the Institutional Control Plan that may be encountered; 5) a description of a contingency plan that may be implemented if the primary conceptual plan fails; and 6) a schedule for completing the work. The Settling Performing

Parties shall submit the Institutional Control Plan to EPA within sixty (60) days after the Effective Date of this Consent Decree.

c. The Groundwater Monitoring Plan shall include the following: 1) identification of the constituents to be analyzed which shall include the four contaminants of concern (“COCs”) identified in ROD-2 and other compounds or elements determined to be necessary to monitor the performance of the landfill cover system; 2) the groundwater monitoring locations; 3) a sampling frequency to provide sufficient data for establishing groundwater trends that may be used to show any potential problems with the integrity and effectiveness of the landfill cover system; 4) monitoring procedures for the leachate and the leachate collection system to ensure that groundwater is not being impacted by contaminants; and 5) a schedule for completing the work. Leachate must be analyzed for the groundwater COCs and for constituents characteristic of the landfill contents. Other data requested by EPA related to the performance of the leachate collection system shall also be obtained and evaluated on an annual basis. The Settling Performing Parties shall submit the Groundwater Monitoring Plan to EPA within one hundred twenty (120) days after the Effective Date of this Consent Decree.

d. Upon approval of both components of the OU-2 Remedial Design/Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Settling Performing Parties shall implement the activities required under these work plans. The Settling Performing Parties shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved OU-2 Remedial Design/Remedial Action Work Plan, including the Institutional Control Plan and the Groundwater Monitoring

Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Performing Parties shall not commence physical activities at the Site prior to approval of the OU-2 Remedial Design/Remedial Action Work Plan, including the Institutional Control Plan and the Groundwater Monitoring Plan.

e. Within ninety (90) days after the Settling Performing Parties conclude that all of the tasks set forth in the OU-2 Remedial Design/Remedial Action Work Plan have been successfully completed in accordance with the approved schedules, the Settling Performing Parties shall submit to EPA and the State a Remedial Action Report (“RAR”). The RAR shall outline all of the activities conducted under this Consent Decree and provide documentation that an easement or other appropriate institutional control, in accordance with the OU-2 Record of Decision and this Consent Decree, has been recorded for the Site. The RAR shall contain a statement by a responsible corporate official of a Settling Performing Party and the Settling Performing Parties’ Project Coordinator that the Remedial Action for OU-2 has been completed in full satisfaction of the requirements of this Consent Decree. EPA acceptance and approval of the RAR will establish and certify completion of the Remedial Action for OU-2 in accordance with this Consent Decree.

12. The Settling Performing Parties shall continue to implement the Remedial Action and O&M, until the Performance Standards set forth in the RODs and the SOWs are achieved and for so long thereafter as is otherwise required under this Consent Decree.

13. Modification of the SOWs or Related Work Plans.

a. If EPA determines that modification to the work specified in the SOWs and/or in work plans developed pursuant to the SOWs is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the RODs, EPA may require that such modification be incorporated in the SOWs and/or such work plans, provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the RODs.

b. For the purposes of this Paragraph 13 and Paragraphs 49 and 50 only, the “scope of the remedy selected in the RODs” is: 1) with respect to ROD-1: a) design and construction of a landfill cap to meet the performance requirements of 401 KAR 48:080; b) design and construction of a leachate collection system to collect leachate from the landfill waste at the perimeter of the waste disposal area and from below the landfill cap; c) design and construction of a leachate treatment system; and d) excavation and consolidation of contaminated sediment within the landfill, under the landfill cap; and 2) with respect to ROD-2: a) implementation of institutional controls and b) groundwater monitoring for purposes of determining the performance of the landfill cover and leachate collection system.

c. If Settling Performing Parties object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 68 (record review). The SOWs and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Performing Parties shall implement any work required by any modifications incorporated in the SOWs and/or in work plans developed pursuant to the SOWs in accordance with this Paragraph.

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

14. Settling Performing Parties acknowledge and agree that nothing in this Consent Decree, the SOWs, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOWs and the Work Plans will achieve the Performance Standards.

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

(1) The Settling Performing Parties 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; and (4) the method of transportation. The Settling Performing Parties 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.

(2) The identity of the receiving facility and state will be determined by the Settling Performing Parties following the award of the contract for Remedial Action construction. The Settling Performing Parties shall provide the information required by Paragraph 15.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

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

VII. REMEDY REVIEW

16. **Periodic Review.** Settling Performing Parties shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

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

NCP.

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

19. Settling Performing Parties' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, the Settling Performing Parties shall undertake such further response actions. Settling Performing Parties may invoke the procedures set forth in Section XIX (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. Disputes pertaining to the whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 68 (record review).

20. Submissions of Plans. If Settling Performing Parties are required to perform the further response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Performing Parties) and shall implement the plan approved by ERA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

21. Settling Performing Parties shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” (EPA/240/B-01/003, March 2001), “Guidance for Quality Assurance Project Plans (QA/G-5)” (EPA/600/R-98/018, February 1998), and subsequent amendments to such guidelines upon notification by EPA to Settling Performing Parties of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Settling Performing Parties may use the existing EPA-approved Quality Assurance Project Plan (QAPP) for the site, if the Settling Performing Parties’ current contractor, de maximis, inc., is selected to perform the Work pursuant to this Consent Decree. However, if at any time, the Settling Performing Parties choose another Supervising Contractor to perform the work, then prior to the commencement of any monitoring project under this Consent Decree, Settling Performing Parties shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a new QAPP that is consistent with the SOW, the NCP and applicable guidance documents. Prior to the commencement of any monitoring project under this Consent Decree, Settling Performing Parties shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan (“QAPP”) that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Performing Parties shall ensure that EPA and State personnel and their authorized

representatives are allowed access at reasonable times to all laboratories utilized by Settling Performing Parties in implementing this Consent Decree. In addition, Settling Performing Parties shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Performing Parties shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree; however, upon approval by EPA, after opportunity for review and comment by the State, the Settling Performing Parties may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. Settling Performing Parties shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Performing Parties shall only use laboratories that have a documented Quality System which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements. Settling Performing Parties shall ensure that all field

methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

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

23. Settling Performing Parties shall submit to EPA and the State two copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Performing Parties with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

24. 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.

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States or the State;
- (3) Conducting investigations relating to contamination at or near the Site;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, or implementing additional response actions at or near the Site;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;

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

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

(9) Assessing Settling Performing Parties' compliance with this Consent Decree; and

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

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to, the prohibition of construction of any on-site water supply wells and/or irrigation wells; and the prohibition of construction of any type on the landfill cap or within 50 feet of the cap. To ensure that the integrity of the cover system will remain intact and continue to protect groundwater from a release of leachate, these restrictions will also include prohibition of any activities on the landfill cap that may damage, alter in any fashion (such as planting ornamental landscaping) or otherwise be detrimental to the landfill cover system; and

c. execute and record in the Recorder's Office or Registry of Deeds or other appropriate land records office of Daviess County, Commonwealth of Kentucky, an easement or other appropriate institutional control, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. In accordance with the schedule set forth in the approved Institutional Control Plan pursuant to Paragraph 11, such Settling Defendants shall submit to EPA for review and approval with respect to such property:

(1) A draft easement or other appropriate institutional control, in substantially the form attached hereto as Appendix L, that is enforceable under the laws of the Commonwealth of Kentucky; and

(2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement or other appropriate institutional controls to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best

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

Following EPA's approval and acceptance of the easement or other appropriate institutional control, and the title evidence, such Settling Defendants shall, in accordance with the schedule set forth in the approved Institutional Control Plan pursuant to Paragraph 11, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement or other appropriate institutional controls with the Recorder's Office or Registry of Deeds or other appropriate office of Daviess County. Following the recording of the easement or other appropriate institutional control, such Settling Defendants shall, in accordance with the schedule set forth in the approved Institutional Control Plan pursuant to Paragraph 11, provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement or other appropriate institutional control showing the clerk's recording stamps. If the easement or other appropriate institutional control is to be conveyed to the United States, the easement or other appropriate institutional control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Settling Performing Parties shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Performing Parties, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25.a of this Consent Decree;

b. an agreement, enforceable by the Settling Performing Parties and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to those restrictions listed in Paragraph 25.b; and

c. the execution and recordation in the Recorder's Office or Registry of Deeds or other appropriate land records office of Daviess County, Commonwealth of Kentucky, of an easement or other appropriate institutional control, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to those activities listed in Paragraph 25.a of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25.b of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the Settling Defendants and their representatives, and/or (iv) other appropriate grantees. In accordance with the schedule set forth in the approved

Institutional Control Plan pursuant to Paragraph 11, Settling Performing Parties shall submit to EPA for review and approval with respect to such property:

(1) A draft easement or other appropriate institutional control, in substantially the form attached hereto as Appendix L, that is enforceable under the laws of the Commonwealth of Kentucky; and

(2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement or other appropriate institutional control to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Performing Parties are unable to obtain release or subordination of such prior liens or encumbrances).

Following EPA's approval and acceptance of the easement or other appropriate institutional control and the title evidence, Settling Performing Parties shall, in accordance with the schedule set forth in the approved Institutional Control Plan pursuant to Paragraph 11, update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, the easement or other appropriate institutional control shall be recorded with the Recorder's Office or Registry of Deeds or other appropriate office of Daviess County. Following the recording of the easement or other appropriate institutional control, Settling Performing Parties shall, in accordance with the schedule set forth in the approved Institutional Control Plan pursuant to Paragraph 11, provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the

original recorded easement or other appropriate institutional control showing the clerk's recording stamps. If easement or other appropriate institutional control is to be conveyed to the United States, the easement or other appropriate institutional control and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

27. For purposes of Paragraphs 25 and 26 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, restrictive easements, and/or an agreement to release or subordinate a prior lien or encumbrance. With respect to property owned or otherwise controlled by the Site owners or operators, past, present, or future, Settling Performing Parties' best efforts shall not require the payment of sums of money in consideration of access or in consideration of use or restrictive easements. If (a) any access or land/water use restriction agreements required by Paragraphs 26.a or 26.b of this Consent Decree are not obtained in accordance with the schedule set forth in the approved Institutional Control Plan pursuant to Paragraph 11, (b) any access easements or other appropriate institutional controls or restrictive easements or other appropriate institutional controls required by Paragraph 26.c of this Consent Decree are not submitted to EPA in draft form in accordance with the schedule set forth in the approved Institutional Control Plan pursuant to Paragraph 11, or (c) Settling Performing Parties are unable to obtain an agreement pursuant to Paragraph 25.c.(1) or Paragraph 26.c.(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement or other appropriate institutional controls being created pursuant to this consent decree in accordance

with the schedule set forth in the approved Institutional Control Plan pursuant to Paragraph 11, Settling Performing Parties shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Performing Parties have taken to attempt to comply with Paragraph 25 or 26 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Performing Parties in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements or other appropriate institutional controls running with the land, or in obtaining the release or subordination of a prior lien or encumbrance, Settling Performing Parties shall reimburse the United States in accordance with the procedures in Section XVI (Payments for Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

28. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the RODs, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Performing Parties shall cooperate with EPA's and the State's efforts to secure such governmental controls.

29. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

30. In addition to any other requirement of this Consent Decree, Settling Performing Parties shall submit to EPA and the State two copies of written quarterly progress reports that:

- (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter;
- (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Performing Parties or their contractors or agents in the previous quarter;
- (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous quarter;
- (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts;
- (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) include any modifications to the work plans or other schedules that Settling Performing Parties 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 quarter and those to be undertaken in the next twelve weeks.

Settling Performing Parties shall submit these progress reports to EPA and the State by the tenth day of every third month following the lodging of this Consent Decree until EPA notifies the Settling Performing Parties pursuant to Paragraph 50.b. of Section XIV (Certification of Completion). If requested by EPA or the State, Settling Performing Parties shall also provide briefings for EPA and the State to discuss the progress of the Work.

31. The Settling Performing Parties shall notify EPA of any change in the schedule described in the quarterly progress report for the performance of any activity, including, but not limited to, data collection and implementation of workplans, no later than seven days prior to the performance of the activity.

32. Upon the occurrence of any event during performance of the Work that Settling Performing Parties are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Performing Parties shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 4, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

33. Within 20 days of the onset of such an event. Settling Performing Parties shall furnish to Plaintiff a written report, signed by the Settling Performing Parties' Project Coordinator, 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, Settling Performing Parties shall submit a report setting forth all actions taken in response thereto.

34. Settling Performing Parties shall submit 2 copies of all plans, reports, and data required by the SOWs, the Remedial Design/Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Settling Performing

Parties shall simultaneously submit two copies of all such plans, reports and data to the State.

Upon request by EPA, Settling Performing Parties shall submit in electronic form all portions of any report or other deliverable Settling Performing Parties are required to submit pursuant to the provisions of this Consent Decree.

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

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

36. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Performing Parties modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Performing Parties at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

37. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 36(a), (b), or (c), Settling Performing Parties shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 36(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

38. Resubmission of Plans.

a. Upon receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Performing Parties shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 30-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 39 and 40.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 36(d), Settling Performing Parties shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any nondeficient portion of a submission shall not relieve Settling Performing Parties of any liability for stipulated penalties under Section XX (Stipulated Penalties).

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

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

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

XII. PROJECT COORDINATORS

42. Within 20 days of lodging this Consent Decree, Settling Performing Parties, and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Performing Parties' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Performing Parties' Project Coordinator shall not be an attorney for any of the Settling Performing Parties 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.

43. Plaintiff may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he

determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

44. EPA's Project Coordinator and the Settling Performing Parties' Project Coordinator will meet as necessary at EPA's discretion.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

45. Within 30 days of entry of this Consent Decree, Settling Performing Parties shall establish and maintain financial security in the amount of \$4,000,000 in one or more of the following forms:

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

46. If the Settling Performing Parties seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 45.d of this Consent Decree, Settling Performing Parties shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f). If Settling Performing Parties seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 45.d or 45.e, 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. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Performing Parties 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 45 of this Consent Decree. Settling Performing Parties' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

47. If Settling Performing Parties can show that the estimated cost to-complete the remaining Work has diminished below the amount set forth in Paragraph 45 above after entry of this Consent Decree, Settling Performing Parties may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Performing Parties shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Performing Parties may reduce the

amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

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

XIV. CERTIFICATION OF COMPLETION

49. Completion of the Remedial Action.

a. Completion of the Remedial Action for OU-1.

EPA has documented the certification of completion of Remedial Action for OU-1 through approval of the Final Remedial Action Construction Report on March 27, 2000; issuance of the Preliminary Closeout Report on September 22, 2000; and issuance of the First Five Year Review Report on September 28, 2001. Operation and Maintenance of the landfill is ongoing in accordance with the requirements of the OU-1 Record of Decision. Implementation of the groundwater monitoring requirements of the OU-2 Record of Decision will be conducted as part of the routine Operation and Maintenance activities of the landfill.

b. Completion of the Remedial Action for OU-2.

Within 90 days after Settling Performing Parties conclude that the Remedial Action for OU-2 has been fully performed and the Performance Standards have been attained, Settling Performing Parties shall submit a RAR requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions). In the RAR, a responsible corporate official of a Settling Performing Party and Settling Performing Parties' Project Coordinator shall state that the Remedial Action for OU-2 has been completed in full satisfaction of the requirements of this Consent Decree. The RAR shall contain the following statement, signed by a responsible corporate official of a Settling Performing Party or the Settling Performing Parties' Project Coordinator:

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

If, after receipt and review of the written RAR, EPA, after reasonable opportunity to review and comment by the State, determines that the Remedial Action for OU-2 or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Performing Parties in writing of the activities that must be undertaken by Settling Performing Parties pursuant to this Consent Decree to complete the Remedial Action for OU-2 and achieve the Performance Standards, provided, however, that EPA may only require Settling Performing Parties to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the RODs," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and

the SOWs or require the Settling Performing Parties to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Performing Parties shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

c. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action for OU-2 and after a reasonable opportunity for review and comment by the State, that the Remedial Action for OU-2 has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for OU-2 for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants by Plaintiff). Certification of Completion of the Remedial Action for OU-2 shall not affect Settling Performing Parties' obligations under this Consent Decree.

50. Completion of the Work.

a. Within 90 days after Settling Performing Parties conclude that all phases of the Work (including O & M), have been fully performed, Settling Performing Parties shall schedule and conduct a pre-certification inspection to be attended by Settling Performing Parties, EPA and the State. If, after the pre-certification inspection, the Settling Performing Parties still believe that the Work has been fully performed, Settling Performing Parties shall submit a written report by a registered professional engineer stating that the Work has been completed in

full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Performing Party or the Settling Performing Parties' Project Coordinator:

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

If, after review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Performing Parties in writing of the activities that must be undertaken by Settling Performing Parties pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require Settling Performing Parties to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the RODs," as that term is defined in Paragraph 13.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOWs or require the Settling Performing Parties to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Performing Parties shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Performing Parties and after a reasonable opportunity for

review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

51. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Performing Parties shall, subject to Paragraph 52, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Performing Parties shall notify the EPA Emergency Response Unit, Region 4. Settling Performing Parties shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOWs. In the event that Settling Performing Parties fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Performing Parties shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Payments for Response Costs).

52. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release

of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants by Plaintiff).

XVI. PAYMENTS FOR RESPONSE COSTS AND PROPERTY TRANSFERS

53. Payments by Settling Federal Agency have been made prior to this modification.

54. Payments and Property Transfers by Settling Non-Performing Parties

54.1 The respective Settling Non-Performing Parties shall individually pay the Settling Performing Parties all monies necessary to satisfy their respective claims for contribution arising out of this action pursuant to the terms of the separate settlement agreements between the Settling Performing Parties and each of the Settling Non-Performing Parties. Accordingly, the Settling Non-Performing Parties shall have no further obligations under this Consent Decree except as otherwise specifically set forth in this Consent Decree or the separate settlement agreements between the Settling Performing Parties and each of the Settling Non-Performing Parties.

54.2 Within 30 days of Entry, if no person seeks leave to intervene in opposition to the entry, or within 70 days of entry if any person seeks to intervene in opposition (whether or not leave is granted), BFIKY shall: (1) transfer to the Owner Settling Defendant that portion of its property located near Kelly Cemetery Road that is included in the Site and is presently enclosed by the Site fence, together with the area within twenty feet of the fence described in the License

Agreement for Site Access between the Performing Parties and BFIKY; and (2) donate to Daviess County the balance of its property located near Kelly Cemetery Road and adjacent to the Site. Accordingly, BFIKY shall have no further obligations under this Consent Decree except as otherwise set forth in this Consent Decree or the separate settlement agreement between the Settling Performing Parties and BFIKY. If an appeal is noticed, the transfers will occur within 10 days following a decision affirming entry, or dismissing the appeal.

55. Payments for Future Response Costs.

a. Settling Performing Parties shall pay to EPA all Future Response Costs not inconsistent with the National Contingency Plan excluding the first \$307,449.00 of Future Oversight Costs. On a periodic basis the United States will send Settling Performing Parties a bill requiring payment that includes a SCORPIOS cost summary, which includes direct and indirect costs incurred by EPA and its contractors, and the DOJ-prepared cost summary which reflects costs incurred by DOJ and its contractors, if any. Settling Performing Parties shall make all payments within 30 days of Settling Performing Parties' receipt of each bill requiring payment, except as otherwise provided in Paragraph 56. Settling Performing Parties shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party making the payment, EPA Site/Spill ID Number 047M, and DOJ Case Number 90-11-2-1098. Settling Performing Parties shall send the check(s) to:

U.S. EPA Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, GA 30384
Attention: Collection Officer in Superfund

b. At the time of payment, Settling Performing Parties shall send notice that payment has been made to the United States, to EPA and to the Regional Financial Management Officer, in accordance with Section XXVI (Notices and Submissions).

c. All payments for Future Response Costs shall be deposited in the EPA Hazardous Substance Superfund.

56. Settling Performing Parties may contest payment of any Future Response Costs under Paragraph 55 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 XXVI (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 Performing Parties shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 55. Simultaneously, the Settling Performing Parties shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Kentucky and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Performing Parties shall send to the United States, as provided in Section XXVI (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 Performing Parties shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Settling Performing Parties shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 55. If the Settling Performing Parties prevail concerning any aspect of the contested costs, the Settling Performing Parties shall pay 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 55; Settling Performing Parties shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Performing Parties' obligation to reimburse the United States for its Future Response Costs.

57. In the event that the payments required by Paragraph 55 are not made within 30 days of the Settling Performing Parties' receipt of the bill, Settling Performing Parties shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Performing Parties' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Settling Performing Parties' failure to make timely payments under this Section including, but not limited to, payment of stipulated

penalties pursuant to Paragraph 71. The Settling Performing Parties shall make all payments required by this Paragraph in the manner described in Paragraph 55.

XVII. INDEMNIFICATION AND INSURANCE

58. Settling Performing Parties' Indemnification of the United States.

a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Performing Parties as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Performing Parties shall indemnify, save and hold harmless the United States (with the exception of the Settling Federal Agency) and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Performing Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Performing Parties as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Performing Parties agree to pay the United States (with the exception of the Settling Federal Agency) 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 based on negligent or other wrongful acts or omissions of Settling Performing Parties, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out

as a party to any contract entered into by or on behalf of Settling Performing Parties in carrying out activities pursuant to this Consent Decree. Neither the Settling Performing Parties nor any such contractor shall be considered an agent of the United States.

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

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

60. No later than 15 days before commencing any on-site Work, Settling Performing Parties shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action for OU-2 pursuant to Subparagraph 49.c of Section XIV (Certification of Completion) comprehensive general liability insurance with limits of one million dollars, combined single limit, and automobile liability insurance with limits of one

million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Performing Parties shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Performing Parties in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Performing Parties shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Performing Parties shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If Settling Performing Parties demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Performing Parties need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

61. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Performing Parties, of any entity controlled by Settling Performing Parties, or of Settling Performing Parties' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Performing Parties' best efforts to fulfill the obligation. The requirement that the Settling Performing Parties 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.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Performing Parties shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region 4, within 24 hours of when Settling Performing Parties first knew that the event might cause a delay. Within 7 days thereafter, Settling Performing Parties shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Performing Parties' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Performing Parties, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Performing Parties 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 Settling Performing Parties from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Performing Parties shall be deemed to know of any circumstance of which Settling Performing

Parties, any entity controlled by Settling Performing Parties, or Settling Performing Parties' contractors knew or should have known.

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

64. If the Settling Performing Parties elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Settling Performing Parties shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and

mitigate the effects of the delay, and that Settling Performing Parties complied with the requirements of Paragraphs 61 and 62, above. If Settling Performing Parties carry this burden, the delay at issue shall be deemed not to be a violation by Settling Performing Parties of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

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

66. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 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.

67. Statements of Position.

a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within seven (7) 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 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. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 68 or Paragraph 69.

b. Within thirty (30) 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. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 68 or 69. Within seven (7) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 68 or 69, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 68 and 69.

68. Formal dispute resolution 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 RODs' provisions.

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

b. The Director of the Waste Management Division, EPA Region 4, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 68.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 68.c. and d.

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

d. In proceedings on any dispute governed by this Paragraph, 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 68.a.

69. 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 67, the Director of the Waste Management Division, EPA Region 4, 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 motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

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

70. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling 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 78. 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 XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

71. Settling Performing Parties shall be liable for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). “Compliance” by Settling Performing Parties 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 SOWs, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

72. Stipulated Penalty Amounts - Work.

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

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 14th day
\$3,000	15th through 44th day
\$7,500	45th day and beyond

b. Compliance Milestones.

(1) Submittal of draft OU-2 Remedial Design/Remedial Action Work Plan and component plans.

(2) Submittal of a final OU-2 Remedial Design/Remedial Action Work Plan and component plans.

(3) Initiation of Groundwater Monitoring Plan in accordance with the approved OU-2 Remedial Design/Remedial Action Work Plan.

73. Stipulated Penalty Amounts - Reports.

a. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other written documents pursuant to this Consent Decree, the RODs and the SOWs:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,500	15th through 44th day
\$3,000	45th day and beyond

74. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Performing Parties of any deficiency; (2) with respect to a decision by the Director of the Waste Management Division, EPA Region 4, under Paragraph 68.b or 69.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Performing Parties' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

75. Following EPA's determination that Settling Performing Parties have failed to comply with a requirement of this Consent Decree, EPA may give Settling Performing Parties

written notification of the same and describe the noncompliance. EPA may send the Settling Performing Parties 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 Performing Parties of a violation.

76. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the Settling Performing Parties' receipt from EPA of a demand for payment of the penalties, unless Settling Performing Parties invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA, Region 4, Attn: Superfund Accounting, P.O. Box 100142, Atlanta, GA 30303, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID #047M, the DOJ Case Number 90-11-2-1098, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to Paula V. Batchelor, Program Services Branch, Waste Management Division, U.S. EPA, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303.

77. The payment of penalties shall not alter in any way Settling Performing Parties' obligation to complete the performance of the Work required under this Consent Decree.

78. Penalties shall continue to accrue as provided in Paragraph 74 during any dispute resolution period, but need not be paid until the following:

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

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

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

79. If Settling Performing Parties fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Performing Parties shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 76.

80. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions

available by virtue of Settling Performing Parties' 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, provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

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

XXI. COVENANTS BY PLAINTIFF

82. 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 payments for EPA's response costs incurred prior to February 15, 2002, previously made by Settling Defendants and the response actions previously performed by Settling Defendants and except as specifically provided in Paragraphs 83, 84, 86 and 86.1 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants, except BFIKY, pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site and Natural Resource Damages at the Site. Except with respect to future liability, these covenants not to sue shall take effect upon the Effective Date. With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of the Remedial Action for OU-2 by EPA pursuant to Paragraph 49.c of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by

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.

82.1. In consideration of the payment that will be made by the Settling Federal Agency under the terms of the Consent Decree, and except as specifically provided in Paragraphs 83, 84 and 86 of this Section, EPA covenants not to take administrative action against the Settling Federal Agency pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA relating to the Site. Except with respect to future liability, EPA's covenant shall take effect upon the receipt of the payments required by Paragraph 53 of Section XVI (Payments for Response Costs). With respect to future liability, EPA's covenant shall take effect upon Certification of Completion of the Remedial Action for OU-2 by EPA pursuant to Paragraph 49.c of Section XIV (Certification of Completion). EPA's covenant is conditioned upon the satisfactory performance by Settling Federal Agency of its obligations under this Consent Decree. EPA's covenant extends only to the Settling Federal Agency and does not extend to any other person.

82.2 Notwithstanding any other provisions of this Section, except Paragraphs 86.1 and 86.2, in consideration of the actions that will be performed, the payments that have been made by BFIKY and the response actions previously performed by BFIKY, the United States covenants not to sue or take administrative action against BFIKY pursuant to Sections 106 or 107 of CERCLA and Section 7003 of RCRA relating to the Site and Natural Resource Damages at the Site. With respect to present and future liability, this covenant not to sue shall take effect for BFIKY upon the transfer of BFIKY's property as required by Paragraph 54.2. This covenant not to sue is conditioned upon the satisfactory performance by BFIKY of its obligations under

this Consent Decree. This covenant not to sue extends only to BFIKY and does not extend to any other person.

83. 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 Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agency,

a. to perform further response actions relating to the Site, or

b. to reimburse the United States for additional costs of response if, prior to

Certification of Completion of the Remedial Action for OU-2:

(1) conditions at the Site, previously unknown to EPA, are discovered,

or

(2) information, previously unknown to EPA, is received, in whole or

in part,

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

84. 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 Settling Defendants, and EPA reserves the right to issue an administrative order seeking to compel the Settling Federal Agency,

- i. to perform further response actions relating to the Site, or
- ii. to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action for OU-2:

- (1) conditions at the Site, previously unknown to EPA, are discovered,

or

- (2) information, previously unknown to EPA, is received, in whole or

in part,

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

85. For purposes of Paragraph 83, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date ROD-2 was signed and set forth in the Records of Decision for the Site and the administrative record supporting the Records of Decision. For purposes of Paragraph 84, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action for OU-2 and set forth

in the Records of Decision, the administrative record supporting the Records of Decision, the post-RODs administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action for OU-2.

86. General reservations of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and EPA reserves, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agency, with respect to all matters not expressly included within Plaintiffs covenants. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants, and EPA and the federal natural resources trustees reserve, and this Consent Decree is without prejudice to, all rights against the Settling Federal Agency, with respect to:

- a. claims based on a failure by Settling Defendants or the Settling Federal Agency to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. liability based upon the Settling Defendants' ownership or operation of the Site, or upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the RODs, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;

- d. criminal liability;
- e. liability for violations of federal or state law which occur during or after implementation of the Remedial Action;
- f. liability, prior to Certification of Completion of the Remedial Action for OU-2, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 13 (Modification of the SOWs or Related Work Plans), except that this reservation of right is not applicable to the Settling Non-Performing Parties;
- g. liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs; and
- h. liability for costs to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

86.1 Reservations concerning Natural Resource injury. Notwithstanding any other provision of this Decree, the United States on behalf of its natural resource trustees, reserves the right to institute proceedings against Settling Defendants in this action or in a new action seeking recovery of Natural Resource Damages, based on (1) conditions with respect to the Site, unknown to the United States at the date of lodging of this Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of Natural Resources, or (2) information received after the date of lodging of the Decree which indicates that there is

injury to, destruction of, or loss of natural resources of a type that was unknown, or of a magnitude greater than was known, to the United States at the date of lodging of this Decree.

86.2 Reservations concerning BFIKY. The covenant not to sue by the United States set forth in Paragraph 82.2 does not pertain to any matters other than those expressly specified in paragraph 82.2. The United States reserves, and this Consent Decree is without prejudice to, all rights against BFIKY, with respect to:

- a. claims based on a failure by BFIKY to meet a requirement of this Consent Decree;
- b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;
- c. criminal liability; and
- d. liability arising from the future arrangement for disposal or treatment of a hazardous substance, pollutant or contaminant at the Site after the date of lodging this Consent Decree.

87. Work Takeover. In the event EPA determines that Settling Performing Parties have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Performing Parties may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 68, to

dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Performing Parties shall pay pursuant to Section XVI (Payment for Response Costs).

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

XXII. COVENANTS BY SETTLING DEFENDANTS AND SETTLING FEDERAL AGENCY

89. Covenant Not to Sue by Settling Defendants. Subject to the reservations in Paragraph 90, 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 or the UAO, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;
- b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or
- c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Kentucky Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraphs 93 (Waiver of Claims Against DcDe Micromis Parties) and 93.1 (Waiver of Claims Against BFIKY) and Paragraph 98 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 83, 84, 86 (b) - (c) or 86 (f) - (h), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

90. The Settling Defendants reserve, and this Consent Decree is without prejudice to: (a) claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place

where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA; and (b) contribution claims against the Settling Federal Agency in the event any claim is asserted by the United States against the Settling Defendants under the authority of or under Paragraphs 83, 84, 86(b)-(c) or 86(f)-(h), of Section XXI (Covenants by Plaintiff), but only to the same extent and for the same matters, transactions, or occurrences as are raised in the claim of the United States against Settling Defendants.

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

92. Settling Performing Parties and Settling Non-Performing Parties hereby covenant not to sue and agree not to assert any direct or indirect claims against each other or against their officers, directors, employees, or agents with respect to Matters Addressed in this Consent Decree, except as necessary to enforce the terms of any agreements by or between them relating to Matters Addressed in this Consent Decree.

93. Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. any materials contributed by such person to the Site constituting Municipal Solid Waste (MSW) or Municipal Sewage Sludge (MSS) did not exceed 0.2% of the total volume of waste at the Site; and

b. any materials contributed by such person to the Site containing hazardous substances, but not constituting MSW or MSS, did not exceed the greater of (i) 0.002% of the total volume of waste at the Site, or (ii) 110 gallons of liquid materials or 200 pounds of solid materials.

c. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

93.1 Settling Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against BFIKY.

XXIII. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

94. Except as provided in Paragraphs 93 (Waiver of Claims Against De Micromis Parties) and 93.1 (Waiver of Claims Against BFIKY), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Except as provided in Paragraphs 93 (Waiver of Claims Against De Micromis Parties) and 93.1 (Waiver of Claims Against BFIKY), 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.

95. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants and Settling Federal Agency are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for Matters Addressed in this Consent Decree.

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

97. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States 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.

98. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or Natural Resource Damages, or other appropriate relief relating to the Site, 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 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 XXI (Covenants by Plaintiff).

XXIV. ACCESS TO INFORMATION

99. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to

activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

100. Business Confidential and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 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, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendants.

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 in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document,

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

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

XXV. RETENTION OF RECORDS

102. Until 10 years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 50.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any

documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

102.1. The United States acknowledges that Settling Federal Agency (1) is subject to all applicable Federal record retention laws, regulations, and policies; and (2) has certified that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C.6927.

103. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. 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 Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted

by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

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

XXVI. NOTICES AND SUBMISSIONS

105. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, the Settling Federal Agency, 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
Washington, D.C. 20044-7611
Re: DJ# 90-11-2-1098

As to EPA:

Franklin Hill
Acting Director, Superfund Division
United States Environmental Protection Agency
Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

Nestor Young
EPA Project Coordinator
United States Environmental Protection Agency
Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

As to the Regional Financial Management Officer:

Paula V. Batchelor
Program Services Branch
Waste Management Division
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303

As to the State

Eric Liebenauer, P.E.
Federal Superfund Program
Division of Waste Management
Kentucky Department of
Environmental Protection
14 Reilly Road
Frankfort, KY 40601-1190

As to the Settling Defendants and Owner Settling Defendant:

Michael Miller
de maximis, inc.
Settling Defendants' Project Coordinator
450 Montbrook Lane
Knoxville, TN 37919

XXVII. EFFECTIVE DATE

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

XXVIII. RETENTION OF JURISDICTION

107. 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 XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

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

“Appendix A” is the Record of Decision for Operable Unit 1.

“Appendix B” is the Record of Decision for Operable Unit 2.

“Appendix C” is the description and/or map of the Site.

“Appendix D” is the list of Settling Defendants.

“Appendix E” is the list of Performing Parties under the UAO.

“Appendix F” is the list of Settling Non-Performing Parties.

“Appendix G” is the list of Settling Performing Parties.

“Appendix H” is the Settling Federal Agency.

“Appendix I” is the Statement of Work for Operable Unit 1.

“Appendix J” is the Statement of Work for Operable Unit 2.

“Appendix K” is the Unilateral Administrative Order for OU-1.

“Appendix L” is the Draft Easement.

“Appendix M” is the Owner Settling Defendant

XXX. COMMUNITY RELATIONS

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

XXXI. MODIFICATION

110. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Settling Performing Parties. All such modifications shall be made in writing.

111. Except as provided in Paragraph 13 (Modification of the SOWs or Related Work Plans), no material modifications shall be made to the SOWs without written notification to and

written approval of the United States, Settling Performing Parties, and the Court, if such modifications fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R. 300.435(c)(2)(B)(ii). Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOWs that do not materially alter that document, or material modifications to the SOWs that do not fundamentally alter the basic features of the selected remedy within the meaning of 40 C.F.R.300.435(c)(2)(B)(ii), may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Performing Parties.

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

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

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

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

XXXIII. SIGNATORIES/SERVICE

115. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice 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.

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

117. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants 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. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. FINAL JUDGMENT

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


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

SO ORDERED THIS ____ DAY OF _____, 200__.

United States District Judge

~~FOR THE UNITED STATES OF AMERICA~~

Date


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

10/6/08
Date

Karl Fingerhood
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
(202) 616-6552

David L. Huber
United States Attorney

10/6/08
Date

Assistant United States Attorney
Western District of Kentucky
510 West Broadway, 10th Floor
Louisville, Kentucky 40202
(502) 582-5911

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation, et al., relating to the Green River Disposal Landfill Superfund Site.

AUG 26 2008

Date

J. I. Palmer, Jr.
Regional Administrator, Region 4
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, GA 30303

8/26/08
Date

Kevin T. Beswick
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, GA 30303

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation, et al., relating to the Green River Disposal Landfill Superfund Site.

FOR All Acquisition Holdings LLC

Date

Signature: _____

Name (print): Jon D. Walton

Title: Executive Vice President

Address:

1000 Six PPG Place

Pittsburgh, PA 15222

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

Signature: _____

Name (print): Lauren McAndrews

Title: Corporate Counsel

Address:

1000 Six PPG Place

Pittsburgh, PA 15222

Ph. Number: (412) 394-2974

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation, et al., relating to the Green River Disposal Landfill Superfund Site.

FOR Lockheed Martin COMPANY, INC.

Date

Signature: /s/
Name (print): Kenneth H. Meashey
Title: VP, Energy, Environment, Safety &
Address: 6801 Rockledge Drive
#338
Bethesda, Maryland 20817

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

Name (print): Mary P. Morningstar
Title: Assistant General Counsel
Address: 6801 Rockledge Drive
Bethesda, MD 20817

Ph. Number: 301 897-6685

AUG - 6 / 07

RECEIVED

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Lockheed Martin Corporation, et al.*, relating to the Green River Disposal Landfill Superfund Site.

FOR GENERAL ELECTRIC COMPANY

Signature: _____

Date:

Name (Print): Keith A. Mooneyhan

Title: EHS General Manager

Address: GE Consumer & Industrial
Appliance Park, AP26-100
Louisville, KY 40225
(502) 452-5634

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

Name: Christina L. Archer

Title: EHS Counsel

Address: GE Consumer & Industrial
Appliance Park, AP2-225
Louisville, KY 40225
(502) 452-7582

CFE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation, et al., relating to the Green River Disposal Landfill Superfund Site.

For Weyerhaeuser Company FOR WILLAMETTE INDUSTRIES, INC.
Successor to

Date: Willamette Industries, Inc.
Name: Melody Sydow
Title: ENVIRONMENTAL mgr.
Address: P.O. BOX 9777, WTC 2G2
FEDERAL WAY, WA 98063-9777

Signature: /s/
Name (print): Charles A. Hess
Title: Manager Environment & Technology
Address: 1300 SW 5th Ave., Suite 3800
Portland, OR 97201

Date: 09.20.07

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

Name (print): MELODY SYDOW
Title: ENVIRONMENTAL MANAGER
Address: WEYERHAEUSER CO.
P.O. BOX 9777, WTC 2G2
FEDERAL WAY, WA. 98063-9777
Ph. Number: 253.924.6650

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation, et al., relating to the Green River Disposal Landfill Superfund Site.

FOR UNITED DISTILLERS MANUFACTURING, INC.

Date 12/17/07

Diageo North America, Inc. as successor
in interest of

Signature:

Name (print): TANIA SAISON

Title: ASSISTANT SECRETARY

Address: United Distillers Manufacturing, Inc.

Six Landmark Square 801 Main Avenue

Stamford, CT 06901 Norwalk, CT 06851

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

Name (print): CT Corporation System

Title: Agent for Service of Process

Address: Kentucky Home Life Building

239 South 5th Street

Louisville, KY 40202

Ph. Number: (502) 587-5960

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation, et al., relating to the Green River Disposal Landfill Superfund Site.

FOR Commonwealth Aluminum Concast, Inc.

Date

Signature: /s/

Name (print): Kenneth J. Willings

Title: Vice President Health Safety & Environmental

Address: Aleris International Inc.

25825 Science Park Dr. Suite 400

Beachwood, OH 44122-7392

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

Name (print): KENNETH J. WILLINGS

Title: VICE PRESIDENT HSE

Address: 25825 SCIENCE PARK DR. SUITE 400

BEACHWOOD, OH 44122-7392

Ph. Number:

216-910-3509

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation, et al., relating to the Green River Disposal Landfill Superfund Site.

FOR Southwire COMPANY, INC.

Date

Signature: (
Name (print): Jeff Herin
Title: Executive Vice-President - Operations
Address: One Southwire Drive
Carrollton, Georgia 30119

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

Name (print): Floyd W. Smith
Title: Executive Vice-President and General Counsel
Address: One Southwire Drive
Carrollton, Georgia 30119

Ph. Number: (770) 832-5712

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation, et al., relating to the Green River Disposal Landfill Superfund Site.

FOR Swedish Match North America, Inc.
(The Pinkerton Tobacco Company)

Date

Signature: /s/
Name (print): Gerard J. Roerty, Jr.
Title: Secretary
Address: 7300 Beaufont Springs Drive
Suite 400
Richmond, VA
23225

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

Name (print): Gerard J. Roerty, Jr.
Title: Secretary
Address: 7300 Beaufont Springs Drive
Suite 400
Richmond, VA
23225
Ph. Number: (804) 302-1862

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OCT 22 2007

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation, et al., relating to the Green River Disposal Landfill Superfund Site.

FOR Kentucky Electronics COMPANY, INC.
Kentucky Electronics, Inc.

Date

Signature: _____
Name (print): Vincent C. Haynes
Title: VP of Finance
Address: 222 Riggs Avenue
P. O. Box 447
Portland, TN 37148

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

Name (print): John Bickel
Title: Attorney
Address: 209 W. 4th Street
P. O. Box 39
Owensboro, KY 42302-0039
Ph. Number: (270) 926-4500

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation, et al., relating to the Green River Disposal Landfill Superfund Site.

FOR _____
Browning-Ferris Industries of
Kentucky, Inc.

10-4-07
Date

Signature: /s/ _____
Name (print): Jo Lynn White
Title: Corporate Counsel
Address: Allied Waste Industries, Inc.
18500 North Allied Way
Phoenix, Arizona 85054

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

Name (print): David O. Ledbetter
Title: Partner
Address: Hunton & Williams
951 E. Byrd Street
Richmond, VA 23219
Ph. Number: (804) 788-8364

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Lockheed Martin Corporation. et al., relating to the Green River Disposal Landfill Superfund Site.

FOR de maximis COMPANY, INC.

31 Jul 08
Date

Signature: [Signature]
Name (print): Bennie L. Underwood
Title: President
Address: 450 Montbrook Lane
Knoxville, TN 37919
(865) 691-5052

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

Name (print): Michael A. Miller
Title: Chief Operating Officer
Address: 450 Montbrook Ln
Knoxville, TN 37919
Ph. Number: 865-691-5052

APPENDIX D

SETTLING DEFENDANTS

All Acquisition Corp. (successor to certain liabilities of Green River Steel Corporation)
Alumax, Inc. on behalf of Alumax, Inc. and Alumax Mill Products, Inc.
Browning-Ferris Industries of Kentucky, Inc.
Commonwealth Aluminum Concast, Inc.
General Electric Company
Indiana Michigan Power Company
Kentucky Electronics, Inc.
Lockheed Martin Corporation
National Aluminum Corporation
Sears
Southwire Company
Swedish Match North America, Inc.
Thomas J. Lipton Company
United Distillers Manufacturing, Inc.
VIACOM Inc. (successor by corporate merger to CBS Corporation f/k/a Westinghouse Electric Corporation).
Willamette Industries, Inc.

APPENDIX E

SETTLING PERFORMING PARTIES UNDER THE UAO

All Acquisition Corp. (successor to certain liabilities of Green River Steel Corporation)

Commonwealth Aluminum Concast, Inc.

General Electric Company

Lockheed Martin Corporation

National Aluminum Corporation

Southwire Company

United Distillers Manufacturing, Inc.

Willamette Industries, Inc.

APPENDIX F

SETTLING NON-PERFORMING PARTIES

Alumax, Inc. on behalf of Alumax, Inc. and Alumax Mill Products, Inc.
Browning-Ferris Industries of Kentucky, Inc.
Indiana Michigan Power Company
Sears
Thomas J. Lipton Company
VIACOM Inc. (successor by corporate merger to CBS Corporation f/k/a
Westinghouse Electric Corporation).

APPENDIX G

SETTLING PERFORMING PARTIES

All Acquisition Corp. (successor to certain liabilities of Green River Steel Corporation)

Commonwealth Aluminum Concast, Inc.

General Electric Company

Kentucky Electronics, Inc.

Lockheed Martin Corporation

National Aluminum Corporation

Southwire Company

Swedish Match North America, Inc.

United Distillers Manufacturing, Inc.

Willamette Industries, Inc.

APPENDIX H

SETTLING FEDERAL AGENCY

U.S. Department of Transportation (on behalf of the U.S. Coast Guard).

APPENDIX I

Statement of Work for Operable Unit 1

(See Copy attached as Appendix I to original Consent Decree)

APPENDIX J

Statement of Work for Operable Unit 2
(See Copy attached as Appendix J to original Consent Decree)

APPENDIX K

Unilateral Administrative Order for OU-1

(See Copy attached as Appendix K to original Consent Decree)

APPENDIX L

Draft Easement
(See Copy Attached as Appendix L to original Consent Decree)

APPENDIX M

OWNER SETTLING DEFENDANT

de maximis, inc.