

ROSE HILL REGIONAL LANDFILL SUPERFUND SITE RECEIVED
SOUTH KINGSTOWN, RHODE ISLAND

DEC 19 2002

TOWN OF SOUTH KINGSTOWN, R.I. Property of U.S. District Court
District of Rhode Island

AND

TOWN OF NARRAGANSETT, R.I. CA 02 335

SETTLING PARTIES

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND
CIVIL ACTION NO.

CONSENT DECREE
UNDER CERCLA SECTIONS 106 AND 107

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EXHIBIT LIST

“Exhibit 1”	Illustration of Methodology for Cost Sharing Arrangement between the State and the Settling Defendants
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA)
)
and)
)
THE STATE OF RHODE ISLAND)
)
Plaintiffs,)
)
v.) Civil Action No. _____
)
THE TOWN OF SOUTH KINGSTOWN, R.I.) Judge _____
)
and)
)
THE TOWN OF NARRAGANSETT, R.I.)
)
Defendants.)
_____)

CONSENT DECREE

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 against the defendants in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA"), seeking injunctive relief and reimbursement of response costs incurred or to be incurred for response actions taken or to be taken for Operable Unit 1 at or in connection with the release or threatened release of hazardous substances at the Rose Hill Regional Landfill

Superfund Site in South Kingstown, Washington County, Rhode Island ("the Site"). The Operable Unit 1 source control remedy was selected by EPA in the Record of Decision for the Rose Hill Landfill Site, dated December 20, 1999.

B. The State of Rhode Island and Providence Plantations (the "State") also filed a complaint against the defendants in this Court alleging that the defendants are liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and R.I.G.L. Chapter 23-18.9 and 23-19.1. The State in its complaint seeks injunctive relief and reimbursement of response costs incurred or to be incurred for response actions taken or to be taken for Operable Unit 1 at or in connection with the release or threatened release of hazardous substances at the Rose Hill Regional Landfill.

C. In accordance with Section 122(j) of CERCLA, 42 U.S.C. § 9622(j), EPA notified the Department of the Interior and the Department of Commerce - National Oceanographic and Atmospheric Administration on August 10, 2000 of negotiations with Settling Defendants regarding the release of hazardous substances that may have resulted in injury to the natural resources under federal trusteeship and encouraged the Trustee(s) to participate in the negotiation of this Consent Decree.

D. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints.

E. The United States, the State, and Settling Defendants contemplate that the State shall implement the remedial design, remedial action, and operation and maintenance of the Operable Unit 1 Source Control Remedy at the Rose Hill Regional Landfill, and that Settling Defendants shall make payments and perform various items of work pertaining to Operable Unit 1 as

provided herein;

F. The United States, the State, and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is 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) and also has personal jurisdiction over Settling Defendants. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

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

b. The State and Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person representing any Settling Defendant or the State with respect to the Site or the Work and shall condition all contracts entered into hereunder upon the performance of the Work in

conformity with the terms of the Consent Decree. The State or its contractors and Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. The State and Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree.

IV. DEFINITIONS

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

a. "Additional U.S. RD/RA Response Costs" shall mean any costs, including direct and indirect costs, that EPA incurs and pays at or in connection with the Site for Operable Unit 1 remedial design/remedial action activities that exceed \$8,500,000 (fifty percent of the estimated cost of Operable Unit 1 remedial design/remedial action activities at the Site).

b. "Arbitrator," for purposes of Sections XVI, XVII and XXII (Paragraph 75) of the Consent Decree, shall mean the RIDEM Administrative Adjudication Division hearing officer.

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

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

Decree shall control.

e. "Cooperative Agreement" shall mean the Cooperative Agreement, Rose Hill Regional Landfill Superfund Site, dated September 25, 2001, for the remedial design for the Operable Unit 1 Source Control Remedy, a copy of which, including the Remedial Design Scope of Work, is attached as Appendix E.

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

g. "DOI" shall mean the United States Department of the Interior and any successor departments, agencies or instrumentalities of the United States.

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

i. "Effective date" of this Consent Decree shall mean the date on which it is entered by the Court.

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

k. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

l. "Expected Life" means the period of time the cap remains in place and the period of time necessary for all monitoring and/or other measures to achieve and maintain cleanup goals established in the ROD.

m. "Federal Natural Resource Trustees" shall mean the National Oceanic and

Atmospheric Administration (NOAA) of the United States Department of Commerce and the United States Department of the Interior (DOI) and any successor departments, agencies or instrumentalities of the United States.

n. "Final Approval of the Consent Decree," for purposes of Paragraph 6 and Paragraph 11 of the Consent Decree, shall mean the earliest date on which all of the following have occurred: (1) the Decree has been lodged with the Court and noticed in the Federal Register, and the period for submission of public comments has expired; (2) the Court has approved and entered the Decree as a judgment; and (3) the time for appeal from that judgment has expired without the filing of an appeal, or the judgment has been upheld on appeal and either the time for further appeal has expired without the filing of a further appeal or no further appeal is allowed.

o. "Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States incurs at or in connection with the Site for Operable Unit 1, beginning October 1, 2000, except for any Additional U.S. RD/RA Response Costs. Future Response Costs shall also include all Interim Response Costs and all Interest on the Past Costs that has accrued during the period from October 1, 2000, to the date of entry of this Consent Decree.

p. "Interim Response Costs" shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between October 1, 2000, and the effective date of this Consent Decree, or (b) incurred prior to the effective date of this Consent Decree but paid after that date.

q. "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.

r. "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.

s. "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, and glass) and can contain small amounts of other wastes as typically may be accepted in RCRA Subtitle D landfills.

t. "Natural Resource Damages" shall mean damages for injury to, destruction of, or loss of natural resources as defined in 42 U.S.C. § 101(16) and includes the costs of natural resource damage assessment and restoration actions.

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

v. "Operable Unit 1" or "Operable Unit 1 Source Control Remedy" shall mean

all work that is to be performed to implement the Record of Decision for the First Operable Unit—Source Control at the Site, signed by the Director of the Office of Site Remediation and Restoration, EPA New England, on December 20, 1999. Operable Unit 1, the first operable unit of a phased approach to cleanup of the Site, generally includes source control through excavation, consolidation and capping of the waste, treatment of the landfill gas, institutional controls, and monitoring and data collection which will inform the future decision regarding management of the migration of contaminants to ground and surface waters. The Operable Unit 1 Source Control Remedy includes, without limitation, remedial design, remedial action, and operation and maintenance of the remedy.

w. "Operation and Maintenance" or "O&M" shall mean all activities necessary to implement the ROD after the Remedial Action has been constructed and determined to be Operational and Functional in accordance with the Remedial Action Statement of Work, including all activities required to maintain the effectiveness of the Operable Unit 1 Source Control Remedy, which are to be performed in accordance with the Operation and Maintenance Plan, Demonstration of Compliance Plan, and Long Term Monitoring Plan to be developed pursuant to this Consent Decree and the Remedial Action Statement of Work attached as Appendix F. Operation and Maintenance shall include groundwater monitoring, leachate collection (if any), and landfill gas collection and monitoring after the response actions constructed are deemed Operational and Functional by the State, with concurrence by EPA.

x. "Operational and Functional" shall have the meaning provided for under 40 C.F.R. § 300.435(f)(2).

y. "Paragraph" shall mean a portion of this Consent Decree identified by an

Arabic numeral or an upper or lower case letter.

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

aa. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that the United States has paid at or in connection with the Site through September 30, 2000, plus accrued Interest on all such costs through such date.

ab. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Response Action set forth in the Record of Decision and Section IV of the Remedial Design Scope of Work.

ac. "Plaintiffs" shall mean the United States and the State of Rhode Island.

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

ae. "Record of Decision" or "ROD" shall mean the Operable Unit 1 Record of Decision for the Rose Hill Regional Landfill Superfund Site signed by EPA on December 20, 1999.

af. "Reimbursable Costs," for purposes of Section XVII of the Consent Decree, shall mean costs incurred by the State for performance of Operable Unit 1, including (1) all third party costs for design, construction, oversight, materials and other Site Work; and (2) RIDEM staff time, including payroll and fringe benefits, plus a markup at the indirect rate applied to State costs that is agreed to between EPA and the State in cooperative agreements under CERCLA. Reimbursable Costs do not include (i) any costs paid for or reimbursed by the United States; (ii) any other indirect costs the State may incur or pay; (iii) any past costs; or (iv) Natural Resource Damages. For purposes of the definition of "Reimbursable Costs," the term "third party" refers

to all persons, including but not limited to contractors hired by the State, other than the parties to this Consent Decree.

ag. "Remedial Action" shall mean those activities, except for Remedial Design and Operation and Maintenance, to be undertaken to implement the ROD, which are to be performed in accordance with the final plans and specifications developed during the Remedial Design, the Remedial Action Statement of Work ("RA SOW") attached hereto as Appendix F, and the Remedial Action Work Plans developed thereunder. Remedial Action shall include groundwater monitoring, leachate collection, and gas collection and monitoring until the response actions constructed are determined to be Operational and Functional.

ah. "Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 19 of this Consent Decree and the Remedial Action Statement of Work, and any amendments thereto.

ai. "Remedial Design" shall mean those activities to be undertaken to develop the final plans and specifications for the Remedial Action specified in the ROD, which are to be performed pursuant to the Remedial Design Work Plan under the terms and conditions of the Rose Hill Regional Landfill Cooperative Agreement attached hereto as Appendix E, including its remedial design Scope of Work ("Remedial Design Scope of Work" or "RD SOW"). The Remedial Design shall include groundwater monitoring during the Remedial Design.

aj. "Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 15 of this Consent Decree and the Remedial Design Scope of Work.

ak. "Response Action" shall mean those actions implemented or to be implemented pursuant to CERCLA at the Rose Hill Regional Landfill Superfund Site under the

first operable unit Record of Decision for the Rose Hill Regional Landfill Superfund Site signed on December 20, 1999.

al. "RIDEM" shall mean the Rhode Island Department of Environmental Management, and any successor agencies, departments, or instrumentalities of the State of Rhode Island.

am. "Rose Hill Regional Landfill Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. §9622(b)(3), and this Consent Decree.

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

ao. "Settling Defendants" shall mean the Town of South Kingstown, Rhode Island and the Town of Narragansett, Rhode Island and are listed on Appendix A.

ap. "State Natural Resources Trustee" shall mean the Director of RIDEM, or his or her designee.

aq. "Site" shall mean the Rose Hill Regional Landfill Superfund Site, encompassing approximately 70 acres, bordered by Rose Hill Road on the west, the Saugatucket River on the east, and residential private property to the north and south in the Town of South Kingstown, Washington County, State of Rhode Island, and generally shown on the map included in Appendix B.

ar. "State" shall mean the State of Rhode Island and Providence Plantations.

as. "State Future Response Costs" shall mean all costs, including but not limited to direct and indirect costs that the State incurs and pays at or in connection with the Site after

September 30, 2000, for response actions for Operable Unit 1, but State Future Response Costs do not include amounts paid or reimbursed to the State by EPA.

at. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

au. "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); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" under Rhode Island General Laws, Chapter 23, Section 19.14-3.

av. "Work" shall mean all work required to implement the Operable Unit 1 Source Control Remedy, including remedial design, remedial action, and operation and maintenance activities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is to provide for the implementation of the Operable Unit 1 Source Control Remedy and to resolve certain claims of the United States and the State against Settling Defendants, as outlined in the Covenant Not to Sue by Plaintiffs, by allowing Settling Defendants to make an up-front cash payment and a commitment to make future payments and provide in-kind services, as provided in Sections VI, VII, IX, X, XVI and XVII herein, to address their liability for Past Response Costs, Future Response Costs, State Future Response Costs, Additional U.S. RD/RA Response Costs, and Natural Resource Damages, subject to the reservations of rights included in Section XX (Reservation of Rights by Plaintiffs).

VI. ESCROW OBLIGATIONS

5. a. Prior to or within ten (10) business days after their signing of this Decree, Settling Defendants shall establish an escrow account (the Escrow) bearing interest on commercially reasonable terms in a federally chartered bank in Massachusetts, Rhode Island, or New York with assets of over \$100 million (the Escrow Agent), and Settling Defendants shall cause to be paid into the Escrow the amount of \$ 4,000,000, plus Interest at a rate of 3.35 percent on \$4,000,000 between March 31, 2002 and the date of payment into the Escrow. The Escrow Agreement between Settling Defendants and the Escrow Agent shall provide that the Escrow Agent shall submit to the jurisdiction and venue of the United States District Court for the District of Rhode Island in connection with any litigation relating to the Escrow or the Escrow agreement. A copy of the Escrow Agreement is attached as Appendix C. Settling Defendants shall provide written notification to EPA and DOJ of the creation and funding of the Escrow within seven days after the payment has been made at the addresses listed in Section XXVI (Notices and Submissions).

b. All funds paid into the Escrow by Settling Defendants shall remain in the Escrow and may not be withdrawn by any person, except to make the payments required by Paragraph 6 or unless one of the following events occurs: (1) the United States or the State of Rhode Island withdraws its consent to entry of the Decree after the Decree has been lodged, pursuant to Paragraph 96; or (2) a final judicial determination is made that the Decree will not be approved and entered. If any of (1), (2) or (3) above occurs, all sums in the Escrow shall be returned to Settling Defendants. Any risk of loss of funds paid into Escrow shall be borne by Settling Defendants.

c. All interest accrued in the Escrow shall be paid to Plaintiff United States in accordance with Paragraph 6 at the time the principal payments under those paragraphs are made. Settling Defendants will be responsible for all fees, taxes, costs and charges of the Escrow, and those amounts will not be deducted from the principal or accrued interest of the escrow account to Plaintiff United States.

VII. PAYMENT REGARDING UNITED STATES' RESPONSE COSTS

6. a. Within ten (10) business days after receipt of notice of Final Approval of the Consent Decree, Settling Defendants shall cause the full amount paid into the Escrow under Paragraph 5 and all accrued interest thereon through the date of payment to be disbursed from the Escrow to the Rose Hill Regional Landfill Special Account within the EPA Hazardous Substance Superfund for Past Response Costs and Future Response Costs.

b. Payment of the amount required to be disbursed under Paragraph 6.a. shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2002V00176, EPA New England Region and Site Spill ID Number 10A5, and DOJ Case Number 90-11-3-06627. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Rhode Island following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time (Standard or Daylight Savings Time, as applicable) shall be credited on the next business day.

c. At the time of payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XXVI (Notices and Submissions).

7. The total amount to be paid pursuant to Paragraph 6 shall be deposited in the Rose Hill Regional Landfill Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

8. Payment of Portion of Additional U.S. Response Costs. Settling Defendants shall reimburse the EPA for 30% of any Additional U.S. RD/RA Response Costs incurred not inconsistent with the National Contingency Plan. If Additional U.S. RD/RA Response Costs are incurred, EPA will send Settling Defendants one or more bills requiring payment of Settling Defendants' percentage, accompanied by an EPA-prepared cost summary, which includes direct and indirect costs incurred by EPA and its contractors. Settling Defendants shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 9 (Resolution of Disputes Concerning Payment of Portion of Additional U.S. Response Costs). Payment to EPA shall be made by Settling Defendants by certified check or checks or cashiers' check or checks payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, Rose Hill Regional Landfill Superfund Site, EPA New England Region and Site Spill ID Number 10A5, USAO File Number 2002V00176, and DOJ Case Number 90-11-3-06627, and shall be sent to:

Region 1
U.S. Environmental Protection Agency
Attn: Hazardous Substance Superfund Accounting
P.O. Box 360197M
Pittsburgh, PA 15251

At the time of each payment to EPA, Settling Defendants shall send notice that such payment has

been made to EPA and DOJ in accordance with Section XXVI (Notices and Submissions). Payment(s) to EPA pursuant to this Paragraph shall be deposited in the Rose Hill Regional Landfill Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

9. Resolution of Disputes Concerning Payment of Portion of Additional U.S. Response Costs.

a. Use of Dispute Resolution. The dispute resolution procedures set forth in this Paragraph shall be the exclusive mechanism for resolving disputes regarding Settling Defendants' obligation to reimburse EPA for 30% of Additional U.S. RD/RA Response Costs. The dispute resolution procedures in this Paragraph are limited to disputes regarding recovery of Additional U.S. RD/RA Response Costs.

b. Standard. Settling Defendants may only contest payment of Additional U.S. RD/RA Response Costs if they determine that EPA has made an accounting error, or if they allege that a cost item that is included represents costs that are inconsistent with the National Contingency Plan.

c. Notice. Any objection to the payment of Additional U.S. RD/RA Response Costs shall be made in writing by Settling Defendants within 30 days of receipt of the bill requiring the payment and must be sent to EPA and DOJ pursuant to Section XXVI (Notices and Submissions). Any such objection (hereinafter referred to as the "Notice of Objection") shall specifically identify the contested Additional U.S. RD/RA Response Costs and the basis for objection.

d. Payment of Undisputed Amounts. In the event of an objection to some but not all Additional U.S. RD/RA Response Costs billed, Settling Defendants shall, within 30 days of receipt of the bill requiring payment, pay all uncontested amounts to EPA in accordance with the instructions in Paragraph 8.

e. Escrow for Disputed Amounts. Within 30 days of receipt of the bill requiring payment, Settling Defendants shall establish an interest-bearing escrow account in a federally chartered bank in Rhode Island, Massachusetts, or New York with assets of over \$100 million, bearing interest at a commercially reasonable rate, and remit to that escrow account funds equivalent to the amount of the contested portion of the Additional U.S. RD/RA Response Costs billed. Settling Defendants shall send to EPA and DOJ 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.

f. Informal Dispute Resolution.

i. Any dispute with respect to Additional U.S. RD/RA Response Costs shall in the first instance be the subject of informal negotiations between EPA and Settling Defendants. The period for informal negotiations shall not exceed 20 days from EPA's receipt of the Notice of Objection, unless such time limit is modified by written agreement of EPA and Settling Defendants. If the dispute is resolved by informal negotiations, the agreement shall be reduced to writing, which, upon signature by EPA and Settling Defendants, shall be incorporated into and become an enforceable part of this Consent Decree. Within 10 days of the execution of the agreement, Settling Defendants shall pay to EPA from the escrow account any amount owed

to EPA pursuant to the written agreement, plus all interest on such amount that has accrued between the date that payment was due under Paragraph 8 (Payment of Portion of U.S. Additional Response Costs) through the date of payment.

g. Formal Dispute Resolution.

i. Initiation. If the dispute as to Additional U.S. RD/RA Response Costs is not resolved by informal dispute resolution, the position advanced by EPA shall be considered binding unless Settling Defendants, within 10 days after the conclusion of the informal dispute resolution period, commence formal dispute resolution by serving on the United States a Notice of Formal Dispute Resolution along with a written Statement of Position on the matter in dispute, which shall include, but not be limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendants.

ii. Within 30 days after receipt of Settling Defendants Statement of Position, EPA shall 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. Within 10 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

iii. Administrative Record. Formal dispute resolution for disputes pertaining to payment of Additional U.S. RD/RA Response Costs shall be on the administrative record. EPA shall maintain an administrative record of the dispute, which shall include the disputed bill and cost summary sent by EPA to Settling Defendants, the Notice of Objection served by Settling Defendants, the Notice of Formal Dispute Resolution, the Statements of Position, including supporting documentation, and Settling Defendants' Reply, if any, submitted

pursuant to this Paragraph.

iv. Final Decision. The Director of the Office of Site Remediation and Restoration, EPA New England Region, will issue a final administrative decision resolving the dispute based upon the administrative record. This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Subparagraph 9.h. below.

h. Judicial Review of Final Administrative Decision.

i. Any administrative decision made by EPA in regard to Additional U.S. RD/RA Response Costs, shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and then 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, and the relief requested. The United States may file a response to Settling Defendants' motion.

ii. In proceeding on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Office Site Restoration and Remediation, EPA New England Region was 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 Subparagraph 9.g.iii.

iii. If EPA prevails in the dispute, within 5 days of resolution of the dispute, Settling Defendants shall pay the amount due under the final decision plus all interest that has accrued between the date the payment was initially due under Paragraph 8 (Payment of Portion of Additional Response Costs) through the date of payment. Payment shall be made from the escrow account in accordance with the instructions in Paragraph 8. Any amounts

remaining in the escrow account after payment to EPA shall be disbursed to Settling Defendants.

iv. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendants not directly in dispute, unless EPA or the Court agrees otherwise.

VIII. DISBURSEMENT OF SPECIAL ACCOUNT FUNDS

10. Subject to the terms and conditions set forth in this Section, EPA agrees to make the funds in the Rose Hill Regional Landfill Special Account available for disbursement to the State for performance of Remedial Action activities under this Consent Decree. EPA shall disburse such funds to the State in accordance with the procedures and milestones for phased disbursement set forth in this Section.

a. Timing, Amount and Method of Disbursing Funds From the Rose Hill Regional Landfill Special Account. Disbursements to the State from the Rose Hill Regional Landfill Special Account shall be made in accordance with 40 C.F.R. Chapter 1, Subchapter B, through the federally established Automated Standard Application for Payments (ASAP) system, in accordance with the requirements and policies governing that program. In addition, the State agrees to the following conditions:

i. The State shall submit an Interim Financial Status Report annually within 30 days of the close of the State's fiscal year. A final Financial Status Report shall be submitted no later than 90 days after the completion of the Remedial Action.

ii. Cash draw downs shall be made only as actually needed for disbursements to perform the Remedial Action activities for Operable Unit One and shall be made by site and action code, as applicable. Over the course of a year, such cash draw downs

shall amount to approximately fifty percent of the costs of such activities.

iii. The State shall provide timely reporting of cash disbursements and balances as required by the EPA Automated Clearinghouse (ACH) User's Manual.

iv. The State will impose the same standards of time and reporting on contractors and subcontractors performing the Work as is required of the State under this paragraph.

v. In the event of any dispute between the EPA and the State as to the amount to be disbursed from the Rose Hill Regional Landfill Special Account for any reimbursement request by the State, the dispute shall be resolved in accordance with Section XV.

b. Balance of Special Account Funds. If any funds remain in the Rose Hill Regional Landfill Special Account after the Remedial Action activities are constructed and determined to be Operational and Functional, EPA may transfer such funds to the Hazardous Substance Superfund. Any such transfer shall not be subject to challenge pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

IX. FEDERAL NATURAL RESOURCE DAMAGES SETTLEMENT

11. a. Within ten (10) business days of notice of the Final Approval of the Consent Decree, Settling Defendants shall make a payment of \$117,000 to NOAA for the purpose of funding the implementation and monitoring of fish passage restoration projects on the Saugatucket River, a payment of \$5,000 to NOAA for reimbursement of past NOAA natural resource damage assessment costs, and a payment of \$3,000 to DOI for reimbursement of past DOI natural resource damage assessment costs.

b. The payments of \$117,000 and \$5,000, for a total payment of \$122,000, to NOAA

shall be made by certified check, payable to DOC/NOAA/NOS/OR&R, accompanied by a letter stating that the payment is for NOAA CPRD, Rose Hill case, and sent to: Kathy Salter, NOAA DARRF Manager, NOAA/NOS/OR&R, 1305 East West Highway, Building #4, Silver Spring, MD 20910. Settling Defendants shall send notice that such payment has been made to the persons listed in Section XXVI (Notices and Submissions) for NOAA, DOI, and DOJ, with a copy of the check.

c. The payment of \$3,000 to DOI shall be made by FedWire Electronics Funds Transfer to the U.S. Department of Justice account in accordance with electronic funds transfer procedures, referencing U.S.A.O. file number 2002V00176, DOJ case number 90-11-2-06627, and NRDAR Account Number 14X5198, in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Rhode Island following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time (Standard or Daylight Savings Time, as applicable) shall be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the persons listed in Section XXVI (Notices and Submissions) for DOI, NOAA, and DOJ. Notice to DOI that such payment has been made shall also be sent to: Bruce Nesslage, Restoration Fund Manager, DOI NRDAR Program, Mail Stop 4449, 1849 C St. NW, Washington, D.C. 20240 and shall reference Accounting Number 14X5198 (NRDAR) and state that the payment is for reimbursement of past natural resource damage assessment costs with respect to the Rose Hill Regional Landfill Site, situated in the Town of South Kingstown, R.I. and is being paid by the Town of South Kingstown, R.I., and the Town of Narragansett, R.I.

X. STATE NATURAL RESOURCE DAMAGES SETTLEMENT

12. As settlement of the State's claims for Natural Resource Damages caused by the release

or threatened release of hazardous substances at the Rose Hill Regional Landfill Superfund Site and pursuant to the State's authority under R.I.G.L. Chapter 23-19.1 and 23-19.14-6, the Settling Defendants shall repair or reconstruct two dams in South Kingstown, Rhode Island as set forth below:

a. On or before December 31, 2003, the Settling Defendants shall complete the repair or replacement of the Indian Run Reservoir Dam in South Kingstown, Rhode Island.

b. The repair or replacement of the Indian Run Reservoir Dam shall be completed in accordance with the design plans that were reviewed by the RIDEM Office of Water Resources, Insignificant Alteration Permit No. 01-0197, in September 2001.

c. On or before December 31, 2006, the Settling Defendants shall complete the repair or replacement of the Asa Pond Dam in South Kingstown, Rhode Island.

d. The repair or replacement of the Asa Pond Dam shall be completed in accordance with the design plans that were reviewed by the RIDEM Office of Water Resources, Insignificant Alteration Permit No. 01-0198, in September 2001.

The estimated cost of the Indian Run Reservoir Dam project is \$298,000 for construction, permitting and engineering. The estimated cost of the Asa Pond Dam project is \$417,000 for construction, permitting and engineering.

XI. PERFORMANCE OF THE OPERABLE UNIT 1 SOURCE CONTROL REMEDY

13. The State agrees that it will assume the lead responsibility for performance of the Remedial Design and the Remedial Action for Operable Unit 1 and will assure performance of the Operation and Maintenance actions for Operable Unit 1. The State also agrees to oversee the Work to

be Performed by Settling Defendants pursuant to Section XVI of this Consent Decree.

Remedial Design.

14. The State has assumed the lead responsibility for development of the Remedial Design, in accordance with a Cooperative Agreement dated September 25, 2001 by and between the State and EPA (the "Cooperative Agreement"), a copy of which is attached hereto as Appendix E and incorporated herein by reference. In accordance therewith, the State has selected a Supervising Contractor. The State shall perform the Remedial Design in accordance with the ROD, the Cooperative Agreement, including the Remedial Design Scope of Work (the "RD SOW") attached to and incorporated in the Cooperative Agreement, and the Remedial Design Work Plan developed in accordance therewith. Within seven (7) days after the date of lodging of this Consent Decree, the State shall advertise, or have advertised, for a formal response to a Request for Proposal ("RFP") for selecting a Design Contractor to implement the Remedial Design. Within 120 days after the date of lodging of this Consent Decree, after reasonable opportunity for EPA review and comment, the State shall select or have selected a Design Contractor to conduct the Remedial Design.

15. Within 45 days after the State's selection of a Design Contractor, the State, through its Design Contractor, shall submit to EPA and RIDEM a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the ROD, in accordance with the Remedial Design SOW attached in Appendix E and for achievement of the Performance Standards and all other requirements set forth in the ROD, this Consent Decree and the Remedial Design SOW. Upon its approval or modification by RIDEM, after reasonable opportunity for review and comment by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this

Consent Decree. Within 45 days after the State's selection of a Remedial Design Contractor, the State, through its Remedial Design Contractor, shall submit to EPA and RIDEM a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

16. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the Remedial Design SOW, including, but not limited to, plans and schedules for completion of the following items: (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section XII (Quality Assurance, Sampling and Data Analysis)); (2) a Construction Quality Assurance Plan; (3) a Pre-design Work Plan; (4) a preliminary design submittal; (5) an intermediate (30%) design submittal; (6) a pre-final (90%) submittal, and (7) a final (100%) design submittal; and may also include a treatability study. These plans and design submittals shall be subject to approval or modification by RIDEM, after review and comment by EPA. The 100% Remedial Design shall also be subject to concurrence by EPA.

17. In accordance with the Cooperative Agreement, upon approval or modification of the Remedial Design Work Plan by RIDEM, after a reasonable opportunity for review and comment by EPA, and after submittal by the Remedial Design Contractor of the Health and Safety Plan for all field activities to EPA and RIDEM, the State shall implement the Remedial Design Work Plan. The State, through its Remedial Design Contractor, shall submit to EPA and the RIDEM Project Coordinator all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule.

Remedial Action.

18. The State shall perform the Remedial Action in accordance with the ROD, the approved 100% Remedial Design, and the Remedial Action Statement of Work (the "RA SOW") attached to this Consent Decree as Appendix F and incorporated herein by reference, and in accordance with the Remedial Action Work Plan developed in accordance therewith. Within 30 days after completion of the 90% Remedial Design, the State shall select a Supervising Contractor for the Remedial Action, after a reasonable opportunity for EPA review and comment and concurrence. Within 15 days after approval of the 100% Remedial Design, the State shall advertise, or have advertised, for a formal response to a Request for Proposal ("RFP") for selecting a Construction Contractor to implement the Remedial Action. Within 100 days after approval of the 100% Remedial Design, the State shall select a Construction Contractor to implement the Remedial Action, after reasonable opportunity for EPA review and comment and concurrence. Within 135 days after approval of the 100% Remedial Design, the State shall commence performance of the Remedial Action.

19. Within 135 days after the State's approval or modification of the final design submittal, the State, through its Construction Contractor, shall submit to EPA and RIDEM a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the Remedial Action SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by the State. Upon its approval or modification by the State, after reasonable opportunity for EPA review and comment, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time

as the Remedial Action Work Plan is submitted, the State, through its Construction Contractor, shall submit to EPA and RIDEM a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

20. The Remedial Action Work Plan shall include the following: (1) schedule for completion of the Remedial Action; (2) schedule for developing and submitting other required Remedial Action plans; (3) groundwater monitoring plan; (4) methods for satisfying permitting requirements; (5) methodology for implementation of the Operation and Maintenance Plan; (6) methodology for implementation of the Contingency Plan; (7) tentative formulation of the Remedial Action team; (8) construction quality control plan (by constructor); and (9) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include the methodology for implementation of the Construction Quality Assurance Plan and a schedule for implementation of all Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the States's Remedial Action Project Team.

21. Upon approval of the Remedial Action Work Plan by the RIDEM, after a reasonable opportunity for EPA review and comment, the State shall implement the activities required under the Remedial Action Work Plan in accordance with the approved schedule. The State, through its Construction Contractor, shall submit to EPA and RIDEM all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule.

22. Following completion of construction of Remedial Action components, the State shall implement the OU1 Operation and Maintenance activities, through its personnel and/or contractors

and/or by arrangement with Settling Defendants, in accordance with the ROD and the Operation and Maintenance Plan developed in accordance with the RA SOW.

23. The State shall continue to implement the Operable Unit 1 Source Control Remedy until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

General State Responsibilities

24. The State shall be responsible for 50% of the total cost of the OUI Source Control Remedy, as set forth in the Record of Decision, until such time that the Remedy is determined to be "Operational and Functional" by the EPA and the State. The State shall receive reimbursement of 30% of such costs, in monetary payments and/or as in-kind services from Settling Defendants in accordance with Section XVII of this Consent Decree.

25. The State shall be responsible for 100% of the cost of the Operation and Maintenance of the implemented Remedial Action for the Expected Life of the Remedial Action and assure the implementation of the Operation and Maintenance activities. The State shall receive reimbursement of 30% of O&M costs, in monetary payments and/or as in-kind services, from Settling Defendants in accordance with Section XVII of this Consent Decree.

26. During the implementation of the Operable Unit 1 Source Control Remedy, the State and, as to any work they perform pursuant to Section XVI of this Consent Decree, Settling Defendants shall satisfy applicable Federal, State, and local requirements necessary for implementing activities addressed in this Consent Decree, in conformance with 40 C.F.R. § 35.6105, including the requirements specified in Section XII (Quality Assurance, Sampling, and Data Analysis) and within this Paragraph. The State and, as to any work they perform pursuant to Section XVI of this Consent

Decree, Settling Defendants shall also comply with all applicable and relevant and appropriate requirements of all Federal and State environmental laws, as set forth in the ROD and the RD SOW and RA SOW. The State shall post a sign at the Site that will include appropriate contacts for obtaining information on activities being conducted at the Site and for reporting suspected criminal activities. The State shall ensure that the Site is properly posted and secured throughout the duration of the Operable Unit 1 work. The State shall assure that, before field work is started, its contractors develop site-specific health and safety plan(s) in accordance with OSHA 29 C.F.R. 1910.120, which shall be submitted to EPA for review and concurrence. The State, in coordination with Settling Defendants, shall develop a re-use plan and assessment as further described in Appendix H to this Consent Decree.

27. It shall be the sole responsibility of the State to secure any necessary Federal, State and local permits pertaining to off-Site treatment, storage, or disposition of hazardous substances from the Site or any other permits that are necessary to complete satisfactorily the Response Action described in the ROD and the RD SOW and RA SOW, except it shall also be the responsibility of Settling Defendants to assure that the State is provided with any such permits that are within their control. If the State acquires property rights or participation therein related to this Site or Consent Decree, the State assures that the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. section 4601-4655, and the EPA regulation promulgated thereunder, 49 C.F.R. Part 24, if applicable, shall be observed. No property acquisitions shall be made by the State in relation to the Site response actions without prior EPA concurrence.

28. If the Remedial Design, the Remedial Action, or Operation and Maintenance results in any off-site storage, destruction, treatment, or disposal of hazardous waste, in accordance with

CERCLA §§ 104(c)(3)(B) and 121(d)(3) and 40 C.F.R. § 300.510(d), the State hereby provides its assurance on the availability of a hazardous waste disposal facility that is in compliance with CERCLA § 121(d)(3) and is acceptable to EPA.

29. By entering into this Consent Decree, the State hereby assures EPA of the availability of hazardous waste treatment or disposal facilities within and/or outside the State that comply with Subtitle C of the Solid Waste Disposal Act and that have adequate capacity for the destruction, treatment, or secure disposition of all hazardous wastes generated within the State during the 20-year period following the date of this Consent Decree, pursuant to CERCLA §§104(c)(3) and (c)(9), 42 U.S.C. §§ 9604(c)(3) and (c)(9), and 40 C.F.R. § 300.510(e).

30. a. Prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, the State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Manager 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 State 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 State 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 State following the award of the contract for Remedial Action construction. The State shall provide the information required by this Paragraph 30.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, the State 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. The State 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.

31. The EPA and the State anticipate that hazardous substances may have to be stored on-site prior to ultimate treatment or disposal of these hazardous substances. The costs of such storage during the period of Operation and Maintenance (e.g., security, monitoring and analysis, etc.) shall be paid by the State.

32. In accordance with Section XXIII of this Consent Decree, Settling Defendants shall provide to the State and EPA and their representatives and contractors access, including all right(s)-of-way and easement(s), to property owned or controlled by any of the Settling Defendants and to the property known as the "Frisella property," necessary to complete the response actions. Settling Defendants shall use best efforts to acquire title to the "Frisella property," which is described in Appendix I, attached hereto and incorporated herein by reference. To the extent such access is not provided to the State and EPA by Settling Defendants, the State shall assist Settling Defendants to

obtain such access. Any easement or other property acquisition shall comply with provisions of 49 CFR Part 24. Access to the Site by EPA and State employees, or their assigns, shall be granted at all reasonable times.

33. In performing the Site remedy, the State agrees to allow Settling Defendants to review and comment on any of the State's remedial design and remedial action submittals. The State shall in good faith consider and, when the State and EPA determines reasonable and consistent with the requirements of the ROD, Consent Decree, the RD SOW, the RA SOW, and work plans developed thereunder, the State may incorporate Settling Defendants' comments and suggestions into the various decisions the State makes in the RD/RA process. To the extent permitted under State purchasing guidelines, the State will specifically consider input from Settling Defendants in the selection of all outside contractors.

XII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

34. a. The State shall comply with quality assurance requirements described in 40 CFR 31.45. Any other quality assurance plans required shall be submitted to EPA before the applicable field work. The State has developed and shall implement an ongoing quality system (quality assurance program). The State has documented this quality system in a Quality Management Plan (QMP) in accordance with "EPA Requirements for Quality Management Plans" (QA/R-2, 11-99), which has been approved by EPA.

b. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, 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 the State of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

c. Forty-five days prior to the commencement of any monitoring project under this Consent Decree, the State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall submit to EPA, at the address stated in Section XXVI (Notices and Submissions), with a copy to the Regional Quality Assurance Manager, U.S. Environmental Protection Agency, 11 Technology Drive, North Chelmsford, MA 01863-2431, for review and comment, a Quality Assurance Project Plan (“QAPP”) that is consistent with the Remedial Design and Remedial Action SOWs, the NCP, and applicable guidance documents.

d. 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.

e. The State shall ensure that EPA personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, in implementing this Consent Decree. In addition, the State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring.

35. a. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall insure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods and the Region I, EPA-New England Compendium of Quality Assurance Project Plan Requirements and Guidance, October 1999, and the national QAPP requirements specified in "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations", EPA QA/R-5, October 1998, or most recent revision, and the "EPA Quality Manual for Environmental Programs", 5360, July 1998. 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, the State may use other analytical methods which are as stringent as or more stringent than the CLP-approved methods. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, 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.

b. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, 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.

36. Upon request, the State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall allow split or duplicate samples to be taken by EPA or its authorized representatives. The State, through its personnel, through its contractors, and/or through Settling Defendants for applicable work performed pursuant to Section XVI of this Consent Decree, shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems appropriate. Upon request, EPA shall allow the State to take split or duplicate samples of any samples it takes as part of its evaluation of the State's implementation of the Work.

37. The State shall assure that all groundwater sampling performed for Operable Unit 1 work shall be conducted using low-flow methods. Any split samples shall be obtained as described in Section 104(e)(4)(B) of CERCLA, as amended.

38. The State, through its personnel, its contractors, and/or through Settling Defendants, shall submit to EPA a copy of the results of all sampling and/or tests or other data obtained or generated by or on behalf of State with respect to the Site and/or the implementation of this Consent Decree unless

EPA agrees otherwise.

39. 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.

XIII. REPORTING REQUIREMENTS

40. In addition to any other requirement of this Consent Decree, the State shall submit to EPA 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 the State or its 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 months and provide other information relating to the progress of construction; (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 the State has approved or is considering; 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 six months. The State shall submit these progress reports to EPA by the twentieth day of the month following each quarter after the lodging of this Consent Decree until the Operable Unit 1 Source Control Remedy is completed. If requested by EPA,

the State shall also provide briefings for EPA to discuss the progress of the Work.

41. The State, through its contractors, shall also provide copies of its contractors' monthly progress reports to EPA on a monthly basis.

42. The State 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 work plans, no later than seven days prior to the performance of the activity.

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

44. Within 20 days of the onset of such an event, the State shall furnish to EPA a written report, signed by the State's 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, the State shall submit a report setting forth all actions taken in response thereto.

45. The State, through its personnel, through its contractors, and/or through Settling Defendants for work performed pursuant to Section XVI of this Consent Decree, shall submit two copies of all plans, reports, and data required by the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans or deliverables to EPA in accordance with

the schedules set forth in such plans. Upon request by EPA, the State, through its personnel, through its contractors, and/or through Settling Defendants for any work performed pursuant to Paragraph XVI of this Consent Decree, shall submit in electronic form all portions of any report or other deliverable the State is required to submit pursuant to the provisions of this Consent Decree.

XIV. EMERGENCY RESPONSE

46. 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, the State shall, subject to the following Paragraph, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Manager, or, if the Project Manager is unavailable, EPA's Alternate Project Manager. If neither of these persons is available, Settling Defendants shall notify the Emergency Response Section, Region I, United States Environmental Protection Agency. The State shall take such actions in consultation with EPA's Project Manager 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 RD and RA SOWs.

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

(Covenants Not to Sue by Plaintiffs).

XV . DISPUTE RESOLUTION BETWEEN UNITED STATES AND STATE

48. In the event of a disagreement between United States and the State regarding performance of the response actions required under this Consent Decree and or any other issue under this Consent Decree, unless otherwise provided, the following dispute resolution procedures shall be followed:

a. Either the United States, through the EPA, or the State, through RIDEM, may initiate this dispute resolution process by providing written notice to the other party's Project Managers/Coordinator, identifying the matter(s) in dispute and requesting that this process be initiated. In the event of such notice, the parties will attempt to resolve the disagreement(s) through informal discussions at the staff level (i.e., between the EPA Project Managers and the RIDEM Project Coordinator), within five (5) working days after receipt of such notice.

b. If the discussion referred to in the preceding paragraph is unsuccessful, the EPA Project Managers and the RIDEM Project Coordinator will immediately obtain the assistance of their respective immediate supervisors, and with such assistance shall attempt to resolve the disagreement(s) within 10 working days of receipt of notice of the dispute.

c. If the immediate supervisors are unable to resolve the dispute within the 10 working day period, the disagreement(s) will be referred to RIDEM's Chief of the Office of Waste Management and EPA Region I's Director of the Office of Site Remediation and Restoration (jointly, the Directors). Upon such referral, which shall be made within 10 working days of the end of the dispute resolution period in subparagraph b, the United States and the State shall each submit to the other a written summary of the matter in dispute and a statement of their position on that matter (Statement of Position), including any data, analysis, or opinion supporting that position and all

supporting documentation relied upon.

d. Within 10 working days of referral by the immediate supervisors, the Directors shall confer and attempt to resolve the dispute. If after the 10 working day period there is no resolution, the EPA shall compile an administrative record consisting of all documents submitted by either party pursuant to the preceding subparagraph c. Based upon that record, EPA's Office of Site Remediation and Restoration Director (EPA's Director) will issue a written decision and will send the decision to RIDEM's Chief of the Office of Waste Management within 30 working days.

e. The State may file a petition with the Court seeking expedited review of the dispute within 20 days after receipt of the decision of the EPA's Director. If the State does not file a petition, the decision of the EPA's Director shall be final, and the State shall proceed accordingly. The United States may file a petition with the Court seeking enforcement of the requirements of this Consent Decree.

f. The United States and the State agree that the Court's review of the dispute shall be resolved in accordance with applicable law. Where such dispute challenges an EPA action or determination that, under applicable principles of administrative law, is to be upheld unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," that standard shall be applied in the dispute resolution proceeding before the Court. Nothing in this Consent Decree shall be construed to allow any dispute or judicial review regarding the ROD's provisions.

g. Time periods for the resolution of disputes between the United States and the State concerning this Consent Decree may be extended or shortened by mutual agreement of the United States and the State. The United States and the State agree to use their best efforts to resolve all disputes at the earliest possible time and lowest management level, taking into consideration the